

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DOMINIQUE JOHNSON PETITIONER
(Your Name)

vs.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Third Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Dominique Johnson Register # 61630-066
(Your Name)

P.O BOX 1000
(Address)

Lewisburg, PA 17837
(City, State, Zip Code)

(Phone Number)

Questions PRESENTED

Petitioner was arrested on August 6, 2009 by The United States of America's Federal Bureau of Investigation Agents without a warrant or probable cause. The arbitrary arrest took place inside a private residence within the jurisdiction of The Commonwealth of Pennsylvania. Local law enforcement did NOT participate in the arrest or subsequent prosecution. All conduct that is alleged to have been involved in the criminal case are "local in nature."

The traditional 4th Amendment inquiry is improper when the Federal Government exceeds their delegated powers. Due to this Petitioner presents 2 interlocking novel questions:

(A) Can a individual challenge a warrantless arrest inside a home by Federal Government Agents under the 10th Amendment?

Answer: Yes

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(B) If a 10th Amendment challenge is available when ~~THE~~ Federal Government warrantless intrusions occur, are the District Courts required to assess the 10th Amendment challenge before the traditional 4th Amendment inquiry is done??

Answer: Yes

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Questions PRESENTED (continued)

Is the 57 year consecutive sentence imposed for aiding and abetting 924(c) convictions greater punishment than the Legislature intended and is thus prohibited by the Double Jeopardy Clause of THE FIFTH Amendment.

Answer: Yes

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In light of the recent decision of Sessions v Dimaya, 803 F.3d 1110 (2018), Petitioner ask this Court to **GVR** his case back to the 3rd Circuit Court of Appeals !!

Answer: The case is applicable
so why not GVR it
and let Johnson receive
the benefits of this NEW
Rule of Law:

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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:

The United States of America

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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 _____ 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 _____ 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 August 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).

STATEMENT OF JURISDICTION

The United States Court of Appeals had appellate jurisdiction over JOHNSON'S Appeal pursuant to 28 U.S.C. section 1291

} The United States Supreme Court has jurisdiction over the Petition for a Writ of Certiorari pursuant to 28 U.S.C. section 1254(1)

OPINIONS DELIVERED BY OTHER COURTS

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STATEMENT OF THE CASE

Statement of Case

This case was remanded by this Court In light of United States vs Alleyne 570 U.S. 2013 on March 24, 2014.

The FDIC DOES NOT insure private banks if a bank robbery occurs. Prior to August 6, 2009 The United States of America's Federal Bureau of Investigation Agents were NOT investigating Petitioner (hereinafter referred to as Johnson) (DJ 9-12). Furthermore the Federal Government lacked jurisdiction over the July 17, 2009 robbery (DJ 1-5). Without a federal issued warrant to search the home and a federal issued warrant to arrest Petitioner, The United States of America's investigation Agents could never lawfully enter Johnson's home or arrest him. There actions violated Johnson's Fourth, Fifth and Tenth Amendment Rights of the UNITED States of America's Constitution.

This petition arises from the United States of America's investigational Agents warrantless/unreasonable entry into Johnson's residence and the subsequent arbitrary arrest that occurred on August 6, 2009.

Thru-out the summer of 2009 five private banks were robbed by a lone gunmen. On July 17, 2009 a T.D Bank

was robbed by a lone gunman but while the gunman was making his escape a witness wrote down the license plate number, (DJ 4).

After learning that the license plate belonged to William Childs the Upper Darby Police Department visited Mr. Childs last known address, but the Upper Darby Police Department was unsuccessful in locating Mr. Childs.

Sometime after July 17, 2009 the United States of America's Federal Bureau of Investigation Agent Donald Asper discovered that the July 17, 2009 T.D. robbery had a similar pattern to a May 29, 2009 robbery of a Wachovia bank branch that occurred in Philadelphia, PA. Agent Asper was given the license plate information, and begun trying to locate William Childs.

At this point FBI Agent Asper is only assisting the local authorities.

On August 4th, 2009 FBI Agent Donald Asper located William Childs (legal owner of the Buick Park Avenue) at a homeless shelter and immediately concluded that Child's was not the lone gunman who entered the bank on July 17, 2009 because of Childs awkward gait (DJ 6).

The United States of America's Agent Donald Asper conducted a non-custodial interview with William Childs on August 4, 2009, during the interview Childs informed Agent Asper that a person by the name of "DOM" (Petitioner) had paid him to register the Buick Park Avenue in his name in June of 2009. Childs also informed that "DOM", Gregory Lawrence and Jerry Taylor were involved in unspecified robberies (DJ 7). Childs further informs that "the last (unspecified) robbery Johnson participated in was on July 9th or 10th in Bucks County (DJ 7-8). Childs obtained his information from Gregory Lawrence.

What is important for this Court to catch is that Childs never informed Agent Asper that Johnson participated in ~~the~~ July 17, 2009 T.D. Bank robbery, nor did he inform of a conspiracy or aiding and abetting. Childs did not pick Johnson out for any bank robbery but most important is that Childs never implicated Johnson in anyway as it would relate to the July 17th, 2009 T.D Bank robbery.

In fact, Childs only informed federal authorities that "DOM" paid him to purchase the Buick Park Avenue, register the vehicle in his name and that Johnson/"DOM", Lawrence "BICE", Taylor/"J-ROCK" and Jerry Taylor's girlfriend had warned him that the cops were looking for him and advised Childs of alibis to use (DJ 8).

Childs further explained that he lived with Gregory Lawrence and other relative on Somerset Street in Philadelphia. Childs reviewed surveillance photos and identified Gregory Lawrence to be the lone gunman in the May 29, 2009 WACHOVIA robbery photo (DJ 9). Child did not implicate Johnson or Jerry Taylor in that robbery.

With this identification from Child's, The United States of America's Federal Bureau of Investigations investigated thru August 6, 2009. On the morning of August 6, 2009 Agent Asper visited Gregory Lawrence's home on Somerset Street and he spoke to Gregory Lawrence and Debbie Taylor (Jerry Taylor's mother) about the robberies and nobody implicated Johnson. But what's most appealing is that Agent Asper did not arrest Gregory Lawrence.

A parallel investigation of Gregory Lawrence **ONLY** was being conducted at the 4 later indicted robberies (DJ 10-12). Johnson and Taylor are never investigated for conspiracy or for being the alleged gunmen of any of the robberies. Furthermore if F.B.I Agent Donald Asper had any information prior to the arbitrary arrest, surely he would have ordered for Johnson to be detained at his scheduled appearance at the criminal Justice Center (Courthouse) on the morning of August 6, 2009 in Philly.

With the 3 positive hits on Gregory Lawrence, Asper obtained a United States of America partied criminal complaint and arrest warrant for the May 29, 2009 Wachovia robbery (DJ 9) ONLY. This initiated the Federal Level judicial proceeding AGAINST LAWRENCE.

Agents located Lawrence on a public street using cellular tracking equipment. At that point no attempt was made to apprehend Lawrence. Instead The United States of America's investigation agent watched Lawrence, Johnson (Who they did not know at the time) and two other men walk the entire length of a city block and then enter the residence. The men did not flee or do anything to attempt to elude the tinted vehicle that had the federal agents inside.

About 15 minutes after Johnson entered his residence a radical illegal entry was made by The United States of America's Federal Bureau of Investigation Agents and the U.S. marshall. A arrest was made of Gregory Lawrence, 10 minutes after Lawrence's departure Johnson was arbitrarily arrested by the federal government's Agents.

Johnson was taken directly to the United States of America's Federal Bureau of Investigation headquarters, the agents discovered Johnson had a Pennsylvania identification card and car keys to the Chevy van (DJ 29), Gregory Lawrence was witnessed standing by before the arbitrary arrest. Johnson's Chevy

van and Pennsylvania I.D card was seized... with the I.D. agents discovered Johnson's legal name and subsequently ordered Johnson to be placed in a photo array for the July 17, 2009 T.D. Bank robbery.

At 7:48 August 6, 2009 (DJ 13-14) the Philadelphia Police Department compiled a photo array that included Johnson. Federal Authorities obtained a positive identification of Petitioner at 7:55 pm on August 6, 2009 almost 3 hours after Petitioner was under arrest, this positive identification that was accepted by federal authorities was A mis-identification. In fact the mis-identification that formed the basis for the United States of America partied arrest warrant that was issued on August 7, 2009 was obtained from T.D. Bank manager Dennis Wolf who did not witness the lone gunmen inside the bank... all Wolf witnessed was a man run by the drive thru window (DJ 15).

A second teller who actually witnessed the robbery and the robber positively identified another male who was **NOT** Johnson (DJ 16) on August 6, 2009.

THE FEDERAL GOVERNMENT'S JURISDICTION IS SOUGHT AND OBTAINED

On August 6, 2009 Special Agent Donald Asper thru the United States Attorney apprised the Magistrate Judge of

the events that occurred of August 6, 2009 and was given permission to file the official paperwork the following day on August 7, 2009 (DJ 17)

Magistrate Judge Carol Sandra Moore Wells issued the arrest warrant based on the identification obtained from T.D. Bank manager Dennis Wolf. The criminal complaint and arrest warrant for Petitioner was for violations of Title 18 U.S.C. sections 2113(d) and 924(c), there is no alleged conspiracy (DJ 18-22)

On August 6, 2009 Gregory Lawrence gives a full admission to the Wachovia robbery he was legally arrested for earlier that evening. Lawrence does not implicate or identify Dominique Johnson, Tiniesha Johnson or Jerry Taylor (DJ 23-24). Federal authorities did not seek an arrest warrant for Jerry Taylor or Tiniesha Johnson!!!

On August 7, 2009 The United States of America's agents applied for a search warrant for the Buick Park Avenue and Johnson's Chevy van (DJ 25-30). F.B.I. Agent Asper only incorporates the events that occurred on August 6, 2009 and still at this point and time The United States of America's investigation Agents are not investigating a conspiracy or a aiding and abetting theory (DJ 25).

This documented reconstruction of that day is important to understand because the United States Federal Government Agent Donald Asper based his arbitrary arrest on Johnson's involvement in a conspiracy and the information that Johnson purchased a car in June 2009. This Federal Agency clearly exceeded their authority and then lied to cover it up.

Johnson remained in the United States of America's custody. During his bail hearing the government exchanged information with Johnson's relatives and begin investigating Johnson's daily life. During this investigation Johnson's mother told Asper that he arrested Johnson for a bank robbery he did NOT commit and Asper informed Johnson's mother "that he knew Johnson did not do the robbery he was holding him for, but that Johnson knew something.

Asper spoke to Tiniesha Johnson (at this point she is not under investigation for being the getaway driver) and Cecil Jackson (Johnson's siblings) and both told Asper that he had the wrong person.

THE FORMULATION OF THE UNITED STATES OF America's criminal Action that Brings Petitioner before the COURT.

On September 8th 2009 Gregory Lawrence implicates Johnson (DJ 31-33). The first time the United States of America's investigation Agents have any evidence of the later indicted offenses is 40 days after the arbitrary arrest,

On September 18, 2009 The United States of America's Assistant Attorney dismissed the initial T.D. Bank robbery charge that Johnson was being held for and simultaneously applied for another federal arrest warrant. The subsequent federal arrest warrant and criminal complaint is specifically for the May 7, 2009 (DJ 34-39), THE

WACHOVIA BANK robbery by the lone gunmen in East Greenville, PA. There is no allegation by complainant for violations of Title 18 U.S.C. section 371 conspiracy or 18 U.S.C. section 2 aiding and abetting, any of the later indicted robberies (DJ 35).

On October 22nd, 2009 USA Assistant Attorney Nancy Winter presented the case before the Grand Jury. The Grand Jury did NOT find probable cause to indict Johnson.

With no hope left and time running out The United States of America's Assistant Nancy Winter reached a deal with Gregory Lawrence (who was the guy the federal government was after on August 6, 2009). Lawrence implicates Tiniesha Johnson as the female getaway driver.

The federal authorities contacted Tiniesha Johnson on November 20, 2009 (they do not arrest Tiniesha Johnson even though she was implicated to a specific robbery) and she agrees to cooperate with the federal government (DJ 40-44). With Gregory

Lawrence and Tiniesha's assistance the United States of America are successful in becoming a party in a action against Petitioner on December 10, 2009. Johnson was indicted via a superceding indictment.

On October 26, 2010 Johnson filed a pretrial suppression motion to suppress all the illegally obtained evidence. The hearing was postponed due to the both Assistant Attorney's having no answer to why Petitioner was arrested on August 6, 2009.

At the hearing that was rescheduled to October 29, 2010, the sole witness was Special Agent Asper who knowingly gave false testimony and as a result the motion was DENIED and the United States of America was permitted to proceed to trial (DJ 45).

The United States of America's Assistant Attorney Nancy Winter had full knowledge the Federal Bureau of Investigation Agent Donald Asper was fabricating probable cause and Assistant Attorney Winter had full knowledge that the United States of America's investigation agents lacked jurisdiction to arrest Johnson on August 6, 2009 inside the house. Assistant Attorney Nancy Winter pioneered the FAST program (Federal Alternatives TO STATE TRIALS) (DJ 46). She understood our government system.

The matter proceeded to Jury trial on November 2, 2010 in the United States District Court. On November 10, 2010 Johnson was found guilty on all counts.

On March 4th 2011 Johnson was sentenced to a total term of imprisonment of 835 months as follows: 151 months on counts 2, 3, 4, 6 and 9. 60 months on each counts 1 and 8 to run concurrent; 84 months on count 5 to run consecutive to the sentence imposed under counts 1, 2, 3, 4, 6, 8 and 9. 300 months as to count 7 to run consecutive to the sentence imposed under count 5; and 300 months as to count 10, to run consecutive to the sentence imposed on count 7.

Thru the exploitation of an arbitrary arrest, disregard for the safeguards established by the Framers of our Constitution and the "BIG MEN IN BLACK" (F.B.I. Agents) pressuring individuals in minority communities to implicate Johnson who is a United States citizen. Due to this our system has Failed.

On March 4th 2011 a timely notice of appeal was filed.

On March 19th 2013 the Judgement was AFFIRMED by the Court of Appeals for the Third Circuit (DJ Appendix B).

On June 11, 2013 The Petition for Rehearing was DENIED (DJ Appendix C).

Johnson filed a pro se writ of Certiorari Petition of the Supreme Court on August 2nd, 2013. On March 24th, 2014 Johnson's Petition for Certiorari was GRANTED, the Judgement VACATED and the matter was remanded back to the THIRD CIRCUIT of APPEALS in light of Alleyne, 570 U.S. 2013 (DJ Appendix D).

On Remand Petitioner submitted a Pro Se Brief raising seven issues of review (DJ 47-48). Subsequently the Third Circuit Court of Appeals appointed counsel and Petitioner's appointed counsel submitted a Brief also with several arguments (DJ 49-50).

On August 7, 2018 The THIRD CIRCUIT AFFIRMED THE Judgement (Appendix E 1-31).

REASONS FOR GRANTING THE PETITION

Reason 4 GRANTING A WRIT OF CERT

(A) Can a individual challenge a warrantless arrest inside a home by Federal Government Agents under the 10th Amendment??
Answer: YES

It's asked that this Court GRANT a Writ of Certiorari to resolve these 2 interlocking questions because the Federal Government continues to exceed their delegated powers, especially when it comes to dealing with minorities, but also because this Court is the only Court who can enforce the jurisdictional limits set in place by the 10th Amendment of our Constitution.

"By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power" see Bond (I) vs United States 564 U.S. 131 S.Ct. 235, 180 L.Ed.2d 269 (2011).

Johnson contends that he has standing to challenge his warrantless arrest and conviction under the 10th Amendment due to the Federal Bureau of Investigation Agents arbitrarily arresting him on August 6, 2009 inside his home, and that the 10th Amendment must be assessed before the District Court can determine a 4th Amendment probable cause violation.

The way our dual government is set up it's evident that the 10th Amendment overrides the 4th Amendment "all day everyday" when the Federal Government acts outside of their delegated powers and are the ones that initiated the warrantless intrusion.

The Circuit Court continues to misinterpret Johnson's warrantless arrest challenge under the 10th Amendment. Since "day one phase one" his position has always been that the warrantless arrest executed by the Federal Government was illegal and without probable cause ().

Whenever the legality of his arrest is challenged in the Circuit Courts it's somehow switched to a argument as if he is challenging the Federal Government's power to investigate (DJ ^{Appendix} E-27). Investigating and warrantless intrusions are two different things.

The Lower Courts have taken the position that Title 28 USC section 533 authorizes Federal Government Agents to enter homes and arrest without a warrant. This simply turns into Circuit Courts delegating "police power" to Federal Agents, which is a misinterpretation of a very clear statute. Section 533 clearly states The Attorney General may appoint officials to detect and prosecute crimes against the United States. The Commonwealth of Pennsylvania does NOT fit the United States bill.

The Court must first inquire if the statute was intended to strip away local law enforcement's power to prosecute the matter.

Should be applicable when warrantless arrest by the Federal Government are challenged.

It's incumbent upon the Federal Courts to be certain of Congress's intent before finding that "Federal law overrides" the usual constitutional balance of Federal and State powers. Gregory v Ashcroft, 501 U.S. 452 460, 111 S.Ct 2395, 115 L.Ed. 2d 410 (1991) (quoting Atascadero, supra, at 243, 1055 S.Ct. 3142 87 L.Ed. 2d 171. These same principals

In Johnson's criminal case their is a blatant 4th Amendment violation due to the robberies being executed by a LONE gunman and no warrant being sought or obtained. But furthermore its this Courts well settled rule of law that "Probable cause to arrest more than one person for a crime is lacking when it is known by law enforcement officers that the crime was committed by one person." see Mallory vs United States (1957) 354 U.S. 449, but the 10th Amendment challenge should be assessed before a probable cause determination is made.

Due to the 10th Amendment their should never be Federal Government Agents testifying at suppression hearings to establish probable cause for purely local conduct (DJ 13). If Congress does not authorize Federal authorities to override the states, then any action taken by the Federal Government without state authorization is outside of their delegated powers and is illegal in this Country.

In the case at bar the District Courts and The Federal Government's law enforcement Agents have mis-interpreted what the Bank Robbery ACT (Title 18 U.S.C. section 2113(d)) was enacted for and this mis-interpretation leads to a presumption that 2113(d) gives the Federal Government authority to investigate and arrest individuals without a warrant for local privately owned banks that get get robbed. Their is NO legal basis for that presumption

The Senate and the House reports on the 1934 Bank Robbery ACT, which first made bank robbery a federal offense and which included the provisions of section 2113(d), state that "the legislation was directed at the "gangsterism" by which roving bandits in the Southwest and Northwest would rob banks and then elude capture by state authorities by crossing state lines. see United States vs Simpson 55 LED 2D 70, 435 U.S. 6 (1978).

All the alleged robberies in Johnson's criminal action happened within the Commonwealth of Pennsylvania. The local authorities have laws and punishment enacted for robberies, and nothing in the legislative history establish that 2113(d) overrides the state's statute, in fact Pennsylvania prosecutes several bank robberies a year. To make a long story short and a short story, shorter, the Federal Government can seek jurisdiction over the local matter if the bank robberies occurred between states, but any other action must first be authorized by the state.

If Johnson is correct that he can challenge his warrantless arrest under the 10th Amendment then that will lead to a different ruling which will overturn his entire conviction because the Federal Government's entire case is constructed from this illegal conduct.

In conclusion of this first matter, when the Federal Government arrest individuals without a warrant it is an exercise of arbitrary power and an individual should be permitted to challenge the intrusion under the 10th Amendment, a traditional 4th Amendment does not fit this type of conduct because the Government's conduct is illegal in and of itself...

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The second interlocking issue Johnson presents to the Courts is that if a 10th Amendment warrantless arrest challenge is permitted, then it is only right that the Lower Courts assess the 10th Amendment argument before determining a 4th Amendment Violation.

Johnson contends the reason the 10th Amendment violation needs to be assessed first is because when a defendant can show the Federal Government exceeded their delegated powers, there is no need for a 4th Amendment inquiry because the conduct by the Federal Government is illegal. The Court can remedy the matter easily by adopting this approach.

Furthermore when a inquiry is done of the functions and purpose of Federal Rule of Criminal Procedure Rule 3, Johnson's approach is more sound. Rule 3 is what invokes the criminal process by A complaining party going before a officer having power to order persons committed for offenses against the United States.

When it comes to local conduct the Federal Government cannot invoke the District Court by swearing out anything when the United States cannot be a lawful party in the matter.

"A criminal act committed wholly within a state cannot be made an offense against the United States of America unless it has some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States. see United States v FOX, 95 U.S. 670 672, 24 L. Ed. 538 (1878).

This Courts precedence dictate that local crimes are not offenses against the United States. When a rogue Agent acts without warrants, it is clear that the United States was not violated before the intrusion. But most important is that the Federal Agent exceeded their delegated authority because they do not have what this Court has coined "police power." see United States vs Morrison, 529 U.S. 598, 618-619, 120 S. Ct. 1740, 146 L. Ed 2d 658 (2000)

NO POLICE POWER, NO OFFENSE AGAINST THE UNITED STATES, NO REASON TO ARREST!!!

Basically Johnson delivers a easy and intellectual approach on how a warrantless arrest when a Federal Government Agent ~~is~~ involved, NEEDS to be assessed.

A traditional 4th Amendment inquiry would come into play if Congress authorized the Federal Government "police power" within the States, but where there is NO law

in place, the Federal Government may not act without a warrant. And to force a individual to be examined under a 4th Amendment doctrine first would be a miscarriage of justice because the individual is suppose to be secure in his or her state from these types of intrusions.

"Impermissible interference with state sovereignty is not within the enumerated powers of the National Government" see New York 505 U.S. at 155-159 112 S.Ct. 2408, 120 L.Ed.2d 120

The 10th Amendment Inquiry must come first when a warrantless act is done by the Federals because its apparent that the local authorities did not surrender authority to the Federal Government to act within that state, so the Court must force the Government to answer why did they not only intrude on the states sovereignty, but what made them intrude on the individuals sovereignty. If that hurdle is then MADE, then a 4th Amendment determination can be done.

"Each State in the Union is Sovereign as to all the powers reserved. It must necessarily be so, because the United States have no claim to any authority but such as the States have surrendered them." United States vs Lopez 514 U.S. 549, 584 (1995).

In Johnson's criminal matter the local law enforcement of the Commonwealth of Pennsylvania DID NOT charge or investigate a conspiracy or aiding and abetting violation (DJ 2), therefore he should never been arrested on August 6, 2009.

This arbitrary power the Federal Government continues to exercise is a serious issue and a direct blow to our established Democracy. This Court should really consider addressing this issue because within the last 10 years, the Federal Government Agents have been infiltrating minority communities and exercising arbitrary police powers to build cases for local conduct.

The Federal Government continues to set up reverse Hobbs ACT robbery sting operations, build drug cases with "ghost dope" and building conspiracy cases as if the individual has conspired against the United States, but what is most intriguing about this conspiracy stuff is that the Federal Agents sits in a warm and toasty office with a cooperating witness and construct cases to meet the federal nexus. It's only a matter of time before we turn on CNN and see Federal Agents shooting down citizens like Micheal Brown and Trayvon Martin.

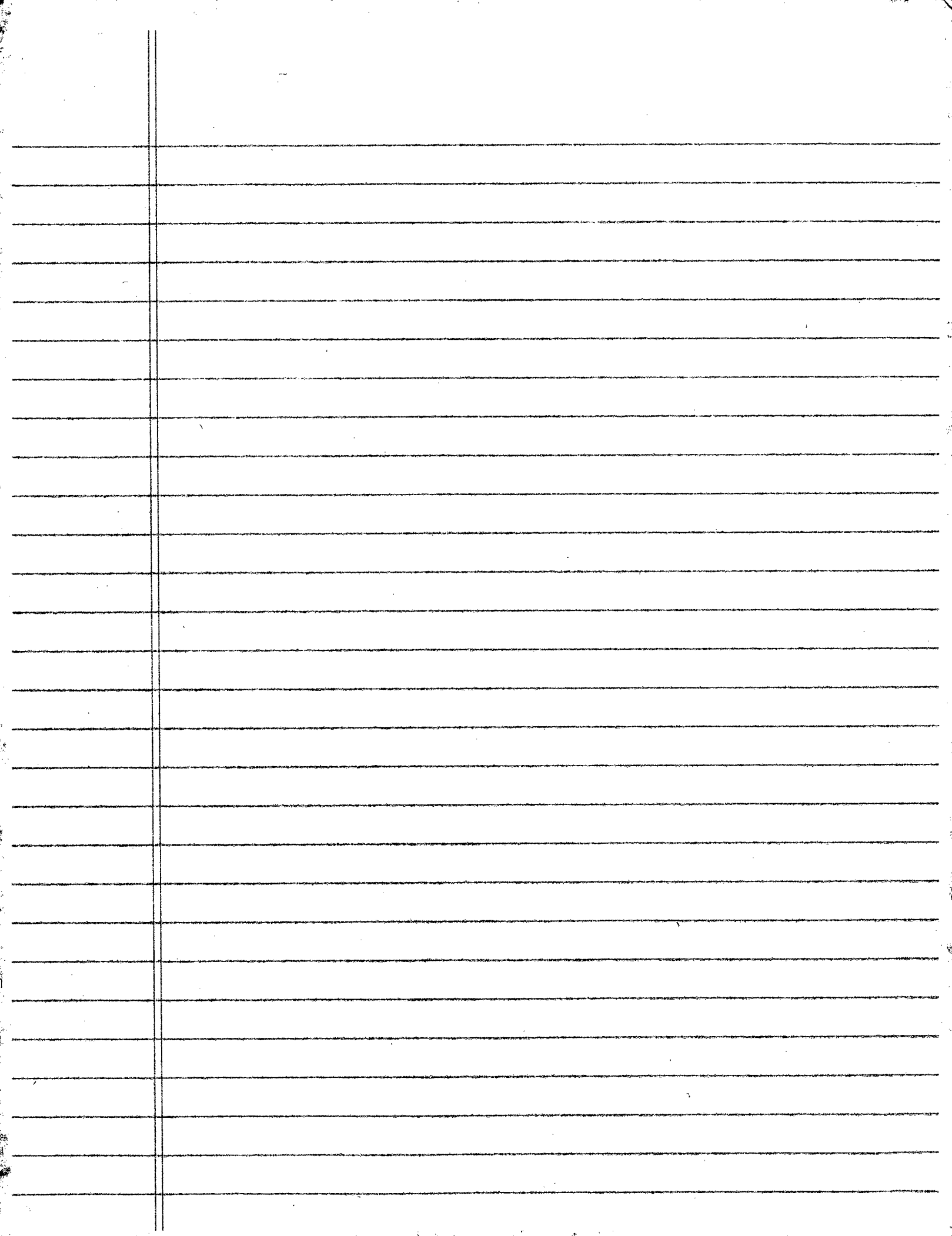
In United States v. Comstock, 560 U.S. --130 S.Ct 1949, 176 L.Ed 2d 878 (2010) this Court determined that "The Federal Government has expanded dramatically over the

past two centuries, but it still must show that a constitutional grant of power authorizes each of its actions.

A GRANT of Power can NOT be established when a warrantless arrest within the Commonwealth of Pennsylvania has occurred by The United States of America's Law Enforcement Agents for purely local conduct. "The Feds cannot have their hands in everybody's cookie jar"!!!!

In conclusion Johnson asserts that the Circuit Courts are delegating police power to Federal Agents when a ruling is determined without assessing the legality of the Federal Agents conduct under the 10th Amendment. This leads to erroneous rulings, wrongful convictions and circumvents our Democracy.

Please help by addressing these issues because martial law is in effect and its going on right under this Courts nose!!!!



Is the 57 year consecutive sentence imposed for aiding and abetting 924(c)'s greater punishment than the Legislature intended and is thus prohibited by the Double Jeopardy Clause of the 5th Amendment.

The reason for Granting a Writ is because it is the District Courts and the Assistant United States Attorney position that there is no limitation on the Government to charge Johnson for a new 924(c) violation under the aiding and abetting theory for each instance in which the same alleged firearm is used during a string of armed bank robberies committed by one of his confederates, which quickly added up to a life sentence.

When the prosecutor charges armed bank robbery the prerequisite "foreknowledge" of a firearm is already included in the charge. There is no need for a 924(c) charge.

"the Government makes its case by proving that the defendant actively participated in the underlying violent crime with advance knowledge that a confederate would use or carry a gun during the crime's commission" see Rosemond v United States 572 U.S. 65 (2014).

The federal aiding and abetting statute, Title 18 U.S.C. section 2, states that a person who furthurs more specifically who

"aid, abets, counsels, commands, induces or procures" the commission of a federal offense "is punishable as a principal."

Key words "who furthurs". So if their is only one theory presented to the jury of aiding and abetting, then only one 924(c) violation can be obtained.

It's JOHNSON'S position that cumulative punishment for aiding and abetting a 924(c), when armed bank robbery is charged, convicted and then subsequently sentenced for violated the Double Jeopardy Clause of The FIFTH Amendment.

When the prosecutor charges aiding and abetting armed bank robbery, their is NO use for a firearm 924(c) offense because the enhancement is already included in 2113(d). This Court Should not allow the prosecutor legislator power, by charging 2113(d) and 924(c), and then at sentencing requesting the mandatory minimum 7 and 25 year penalties to be imposed. That clearly is a tactic that decieves the defendant and then the Court.

Furthuremore the firearm use that is incorporated in the armed bank robbery statue is the natural and probable consequence of conspiracy and aiding and abetting armed bank robbery 2113(d).

Under this Courts precedence section 924(c) creates A offense distinct from the underlying federal felony, see United States vs. Ramirez, 482 F.2d 807 (CA2 1973); United States vs. Sudduth, 457 F.2d 1198 (CA1 1972).

For a prosecutor to convict a defendant for a 924(c) under the aiding and abetting theory the prosecutor must show the use or carriage of a gun and the commission of the predicate offense, see Smith v United States 508 U.S. 223, 228, 113 S.Ct 2050, 124 L.Ed 2d 138 (1993).

For a prosecutor to convict a defendant of aiding and abetting armed bank robbery 2113(d) the prosecutor must prove the use and carriage of a gun and the predicate offense.

There is NO difference in the two. There is no separate offense.

In Blockburger v United States 284 U.S. 299, 76 L.Ed 306, 52 S.Ct 180 (1932), the Supreme Court set out the test for determining "whether two offenses are sufficiently distinguishable to permit the imposition of cumulative punishment". In Brown v OHIO, 432 U.S. 161, 166, 53 L.Ed 2d 187, 97 S.Ct 2221 (1997). The Court held "the applicable rule is that where the same act or transaction constitute a violation of two distinct statutory

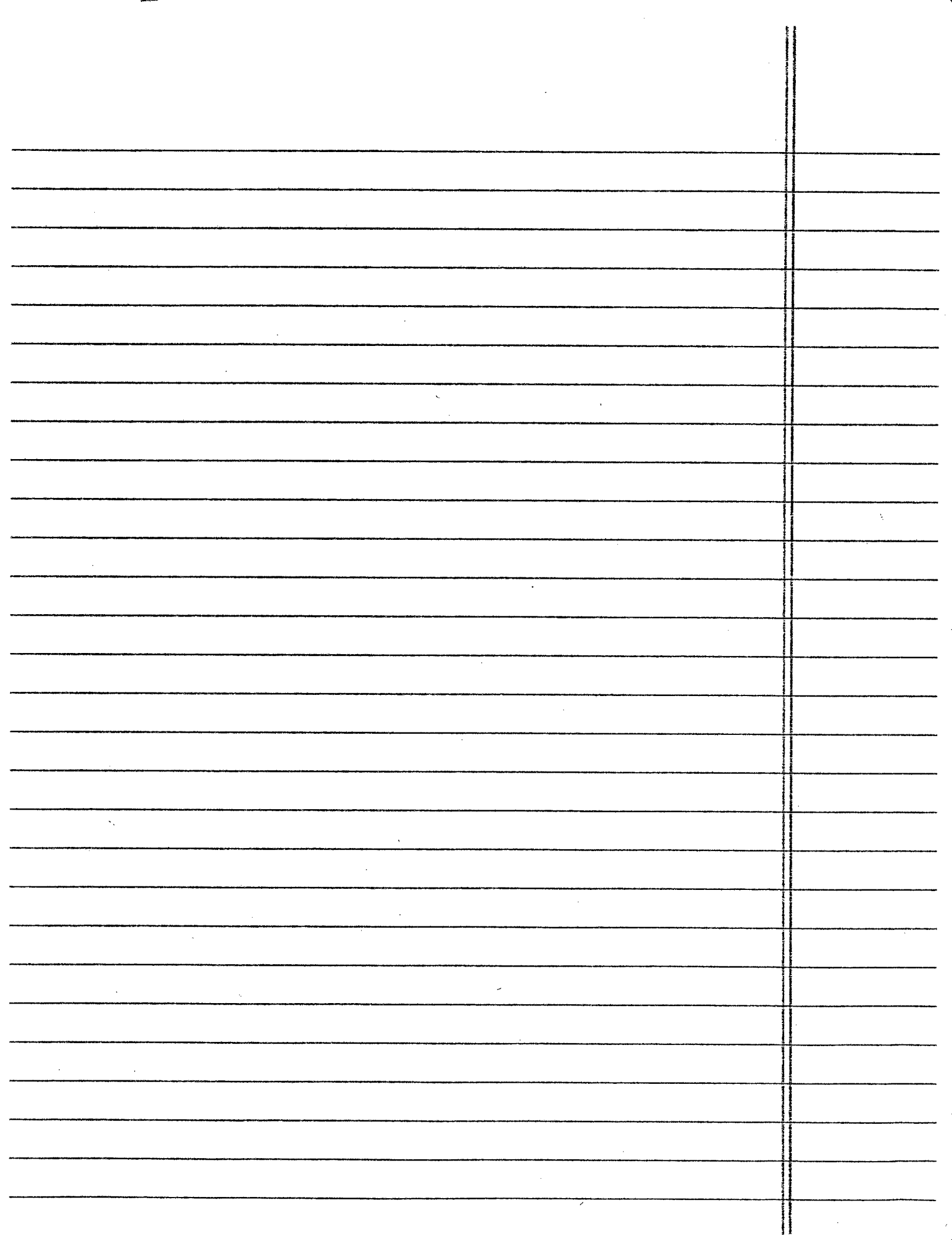
provisions, the test to be applied to determine whether there are two offenses or only one "is whether each provision requires proof of a fact which the other does not."

This Court has already made clear that a defendant cannot be punished for 924(c) and 2113(d) sentencing enhancement, but punishing for aiding and abetting is a different realm.

Aiding and abetting both 924(c) use and carry of a firearm and 2113(d) armed bank robbery constitute the same offense. In fact 2113(d) is more specific, but what makes this punishment a double jeopardy violation is the Government relies on the same exact proofs and then seeks cumulative punishments for aiding and abetting when the defendant is already being punished for the principals conduct.

Its pretty much overkill!!!

To punish a defendant with cumulative punishments for the same aiding and abetting offense is not what the legislature intended. This violates the Double Jeopardy Clause of the FIFTH Amendment.



In light of the recent decision of Sessions v Dimaya 803 F.3d 1110 (2018), Petitioner ask this Court to GVR his case back to the 3rd Circuit Court of Appeals.

Johnson centers his argument around the recent decision of Dimaya which ruled that 16(b)'s residual clause produces more unpredictability and arbitrariness than the Due Process Clause tolerates. It was determined that 16(b)'s residual clause is unconstitutionally vague.

JOHNSON was convicted of three section 924(c) using and carrying a firearm during and in relation to a crime of violence" and received a 50 year enhancement due to two of his section 924(c)'s being considered prior convictions. As it relates to the Dimaya case, ~~the~~ second and subsequent/prior convictions are the only two section 924(c)'s Petitioner is challenging.

Precedence establishes that the second and subsequent section 924(c)'s are prior convictions and they do not need to be submitted to a jury. see Apprendi v New Jersey, 530 U.S. 466, 501 (2000), and Almandarez-Torres 523 U.S. 224, 140 L.ED 2d 350, 118 S. Ct 1219 (1998).

This Court has noted that "statue 18 U.S.C. section 16, provides the federal criminal code's definition of "crime of violence."

It is Johnson's position that Title 18 U.S.C. section 16 A&B are incorporated into section 924(c)'s using and carrying a firearm during and in relation to a crime of violence elements and residual clause.

Due to this 924(c)'s residual clause is vague because it also invites the same unpredictability and arbitrariness that the Constitution allows.

When a defendant is convicted and sentenced with multiple sections of 924(c) violations within the blink of an eye any section 924(c) after the initial forces the sentencing Judge to impose 25 year enhancement for each.

The enhancement is imposed due to the sentencing Judge determining that the defendant has had a prior conviction of a crime of violence. This determination is done by the sentencing Judge's assessment under the residual clause of section 924(c)(3)(B). The residual clause has the same two features that conspired to make the Armed career criminal ACT's (ACCA) residual clause unconstitutionally vague and 16(b)'s in *Dimaya*.

When Petitioner initially filed his pro se Brief in The Third Circuit Court after remand the, Johnson case was undecided. Petitioner was appointed counsel and a subsequent

Brief was filed by the Public Defender in which he challenged if Title 2113(d) armed bank robbery was a crime of violence (DJ 49) under the Johnson doctrine.

This was a clear mis-interpretation of this Courts holding and Dimaya reiterates that the Public Defender continues to mis-understand Johnson and now Dimaya (DJ),

Due to this the Court of Appeals simply assessed the armed bank robbery statute with the elements clause of section 924(c) and a determination was made that statute 2113 is a crime of violence.

THE residual clause was never addressed !!!

In a criminal matter like Petitioner's the Appeals Court must compartmentalize the charges and understand that a defendant who has a second or subsequent 924(c) is enhanced due to the Courts determination that a prior conviction has been acquired, and then the sentencing Judge determines if the prior conviction is a crime of violence under the residual clause.

Section 924(c)'s residual clause mirrors Johnson and Dimaya...all three must be unconstitutionally vague.

Judge Gorsuch said it best "Because the residual clause in the statute now before us uses almost exactly the same language as the residual clause in Johnson, respect for precedent alone would seem to suggest that both clauses suffer the same Judgement. see Sessions v Dimaya 803 F.3d 1110 (2018)

For the Lower Courts to enhance A defendant under the residual clause and then apply the elements clause when new decisions are handed down by The Supreme Court is unacceptable. With these new decisions its clear that the abuse of section 924(c) is finally catching up to the Government.

It is Johnson's position that two of his section 924(c) convictions cannot stand due to the recent decision in Dimaya because it is essentially laced with the same residual clause as the ACCA and 16(b)'s residual clause and furthermore its unconstitutionally vague because it offers no reliable way to determine what a "crime of violence" is.

In light of the recent Dimaya ruling it is asked that this Court GRANT, VACATE and REMAND the case back to THE THIRD CIRCUIT COURT OF APPEALS so the new law can be applied.

OR ANY OTHER RELIEF
THIS COURT DEEMS
JUST !!!

IN CONCLUSION

As the Nation can see at this present moment thru Supreme Court Justice Nominee Kavanaugh's confirmation dilemma, A accuser is suppose to be innocent until proven guilty, free from deprivation of life, liberty, the pursuit of Happiness, and free from unreasonable searches and seizures.

Judge Kavanaugh is being accused and still remains free because when you are wealthy and can defend yourself against the Government the Constitution applies. This is NOT the same method that applies to minorities.

It's beautiful when our Democracy works as it is working in Judge Kavanaugh's situation, but when it fails like it has in JOHNSON's case and alot more others, This Court is the only Court who can enforce our Constitution.

This Courts Bench is excellent and fair but the Circuit Courts are disregarding our Constitution, and with a additional Constitutional interpreter like Judge Kavanaugh working in concert with the Justices already on the Bench our Constitutional laws can be restored.

Petitioner has presented Novel Questions that are of National concern. It is requested that the Writ of Cert ~~BE~~ GRANTED, or any other Relief Deemed Just by this Court. Petitioner needs this Courts judicial Guidance!!!!

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dominique R.

Date: Oct 16, 2018