

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

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IN THE  
SUPREME COURT OF THE UNITED STATES

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PHILLIP RAWNSLEY,  
Petitioner

v.

UNITED STATES,  
Respondent

**MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI  
OUT OF TIME**

Petitioner, Phillip Rawnsley, moves, through undersigned counsel, for leave to file the enclosed Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit out of time.

In support of this motion, undersigned counsel states the following:

1. Mr. Rawnsley's petition for a writ of certiorari was due to be filed on or before July 3, 2019.
2. Mr. Rawnsley's petition was one of three petitions with the same deadline that undersigned counsel was preparing for filing. Counsel was also preparing petitions in an additional three cases with a filing deadline of July 5, 2019.
3. The petition in this case was finalized on July 3, 2019 and filed electronically in this Court on that date. Paper copies were made on that date. However, counsel was unable to bring the paper copies to the post office on July 3, 2019 for timely filing.

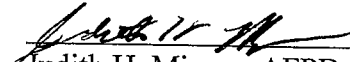
4. Counsel was attempting to complete the other two petitions with the same filing deadline in order to bring all three to the post office in a single trip. By the time the third petition was completed, the post office was closed.

5. Counsel's office was short-staffed on July 3, 2019 due to the impending holiday, adding to the difficulty of completing the petitions and preparing the paper copies as there were other filings to be prepared and work to be done in addition to the preparation of undersigned counsel's petitions.

6. Counsel's efforts to complete the petition for timely filing were also hampered by her need to address unanticipated, time-sensitive issues on July 1 and 2, 2019 with a client counsel is representing in his pending appeal from a death sentence.

Wherefore, undersigned counsel requests that this Court grant leave to file Mr. Rawnsley's petition for a writ of certiorari out of time.

Respectfully submitted,  
Phillip Rawnsley  
By his attorney

  
Judith H. Mizner, AFPD  
Federal Defender Office  
51 Sleeper St.  
Boston, MA 02210  
617-223-8061

Dated: July 6, 2019

# United States Court of Appeals For the First Circuit

No. 16-2321

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PHILLIP RAWNSLEY,

Petitioner, Appellant,

v.

UNITED STATES,

Respondent, Appellee.

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Before

Howard, Chief Judge,  
Lynch and Barron, Circuit Judges.

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## JUDGMENT

Entered: April 4, 2019

Petitioner appeals from the district court's denial of a 28 U.S.C. § 2255 motion featuring a challenge to one or more 18 U.S.C. § 924(c) convictions under Johnson v. United States, 135 S. Ct. 2551 (2015) (Johnson II), and related precedent. The court entered an order to show cause citing recent precedent from this court holding that various federal offenses, including potentially the offense(s) anchoring petitioner's § 924(c) conviction(s), categorically satisfy the force clause at § 924(c)(3)(A), rendering any challenge to the residual clause at § 924(c)(3)(B) irrelevant. Petitioner was directed to show cause why relief should not be denied in this case in light of the precedent cited. Petitioner has responded to that order to show cause, and we have considered carefully any arguments sufficiently developed in that response and any supplemental or amended response. We conclude, after review of those arguments and relevant portions of the record, that the district court's denial of § 2255 relief was not erroneous. See Parsley v. United States, 604 F.3d 667, 671 (1st Cir. 2010) (standard of review). To the extent petitioner requests denial of relief without prejudice in case the Supreme Court eventually deems the § 924(c)(3)(B) residual clause unconstitutionally vague, such a ruling would not be appropriate in light of the force-clause basis of this ruling.

Accordingly, any previously imposed stay is lifted, and any pending motion for appointment of counsel is denied. To the extent petitioner has filed an application for expanded COA to encompass a claim that the Johnson II claim goes to jurisdiction and/or actual innocence,

that request is denied as moot in light of the conclusion that the Johnson II claim fails on the merits. The judgment of the district court is affirmed. Any remaining pending motions are denied as moot.

By the Court:

Maria R. Hamilton, Clerk

cc:

Judith H. Mizner  
Phillip Rawnsley  
Seth R. Aframe

**Additional material  
from this filing is  
available in the  
Clerk's Office.**