



U.S. Department of Justice

Office of the Solicitor General

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Washington, D.C. 20530

April 26, 2018

Honorable Scott S. Harris  
Clerk  
Supreme Court of the United States  
Washington, D.C. 20543

Re: *Gregory Eugene Allen v. United States*, No. 17-5684

Dear Mr. Harris:

The government's brief in opposition in this case stated that if petitioner were to prevail in his vagueness challenge to the residual clause in Section 4B1.2(a)(2) of the previously mandatory Sentencing Guidelines, the remedy would be a resentencing proceeding with the same sentencing range under the current advisory Sentencing Guidelines. Br. in Opp. 13-14 & n.\* The brief supported that statement by citing this Court's holding in *Beckles v. United States*, 137 S. Ct. 886 (2017), that the residual clause is not unconstitutionally vague in the context of an advisory Guidelines regime. Br. in Opp. 13. The brief omitted to note, however, that the Sentencing Commission has removed the residual clause from Sentencing Guidelines § 4B1.2. See 81 Fed. Reg. 4741 (Jan. 27, 2016).\* Accordingly, the application to petitioner of the career-offender guideline in a resentencing proceeding would rest on the classification of petitioner's prior conviction for sale of cocaine as a controlled-substance offense under current Sentencing Guidelines § 4B1.2(b) and his prior conviction for resisting arrest as a crime of violence under current Sentencing Guidelines § 4B1.2(a)(1). See Presentence Investigation Report ¶¶ 43, 44; see also Sentencing Guidelines § 4B1.1(a). The government would appreciate if you could distribute this letter to the Members of the Court. Thank you for your consideration.

Sincerely,

Noel J. Francisco  
Solicitor General

cc: See Attached Service List

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\* The government made a similar omission in its briefs in opposition to the petitions for writs of certiorari in No. 17-6262, *Gates v. United States*, No. 17-6769, *James v. United States*, and No. 17-6877, *Robinson v. United States*. Those petitions, like this one, should be denied for the other reasons stated in the briefs in opposition.

17-5684  
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