

No. _____

17-7141

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES R. YOUNG — PETITIONER
(Your Name)

vs.

WARDEN, FCC COLEMAN-MEDIUM — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI
REQUEST FOR REHEARING

JAMES R. YOUNG

(Your Name)

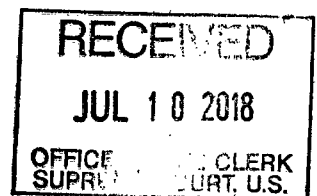
Federal Correctional Complex Med.
PO Box 1032

(Address)

Coleman, Florida 33521-1032

(City, State, Zip Code)

(Phone Number)



JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 13, 2017.

☒ 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**: N/A

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).

LIST OF PARTIES

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

STATEMENT OF THE CASE

This Petition for Rehearing is being filed in accordance to Supreme Court Rule 44. The denial for Certiorari was filed on 6/25/2018 [See Order at Exhibit "B"].

In this Petition Request for Rehearing, Petitioner can establish that his grounds for his request are based on "other substantial grounds not previously presented" pursuant to Rule 44(2).

The focus of the "other substantial grounds not previously presented" is the copy of Petitioner's state plea which shows he plead to "only" the residual clause. See "Exhibit 'A'".

The focus of the violation in the instant case is that "The Government violates the Due Process Clause when it takes away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or is so standardless that it invites arbitrary enforcement. Kolender v. Lawson, 461 U.S. 352, 357-358."

As a show of the Government's due process clause violation in Petitioner's instant case, it has been held in retroactive Johnson (via Welch): "Imposing an increased sentence under ACCA's residual clause violates due process. Pp. 3-15".

This holding by the United States Supreme Court was also declared a substantive rule that would apply retroactively. By striking down the residual clause as void for vagueness, Johnson changed the substantive reach of the Armed Career Criminal Act, altering "the range of conduct or the class of persons that the [Act] punishes". Schriro, *supra*, at 353, 124 S. Ct. 2519, 159 L. Ed. 2d 442.

'Before' Johnson, the Act applied to any person who possessed a firearm after three violent felony convictions, even if one or more of those convictions fell under only the residual clause. An offender in that situation faced 15 years to life in prison.

'After' Johnson, the same person engaging in the same conduct [with the same type of felony convictions] is no longer subject to the Act and faces at most 10 years in prison.

The **residual clause** is invalid under Johnson, so it **"can no longer"** mandate or authorize any sentence.

The **residual clause** under Johnson establishes, in other words, that "even the use of impeccable factfinding procedures could not legitimate" a sentence based on that clause. United States v. United States Coin & Currency, 401 U.S. 715, 724, 91 S. Ct. 1041, 28 L. Ed. 2d 434 (1971).

It follows that Johnson is a substantive decision that controls what should be the determined outcome in Petitioner's instant case.

In support and **newly recognized by this Court** is the Supreme Court ruled 7-2 on June 18, 2018, that an error in calculating the sentencing guidelines is an error that must be addressed by resentencing the defendant, even if no one noticed the error when it occurred. The Court must correct the mistake, even if the sentence imposed falls within the correct guideline range. Petitioner meets the standard requirements of this position and holding by this Court, and since this Supreme Court has **newly** told appellate courts to correct those errors that affect substantial rights if the error "seriously affects the fairness, integrity, or public perception of judicial proceedings", under "Plain Error", Petitioner is now requesting a remand to the Eleventh Circuit Court of Appeals in his case for this **newly** authorized review in light of Rosales-Mireles v. United States, No. 16-9493.

Petitioner's sentence is one that is clearly "unreasonable" for his crime and unconstitutional pursuant to the **residual clause**.

Substantial Grounds Not Previously Presented

The focus of the "other substantial grounds not previously presented" is the copy of Petitioner's state plea which shows **he plead to only the residual clause**. See Exhibit "A".

In United States v. Hill, 863 F.2d 1575, 1581-82 (11th Cir. 1989), a panel of the Eleventh Circuit Court of Appeals held that § 810.02 was a "burglary" under the ACCA's

enumerated felonies clause and thus was categorically a violent felony. Taylor v. United States, 495 U.S. 575 (1990), however, abrogated Hill. Taylor held that, for a state law offense to qualify as a burglary under the enumerated felonies clause, **the offense had to require entry into an actual building or structure**; thus, the Court held that a Missouri [or Florida] burglary statute, which criminalized entry of locations other than a structure, **was not categorically** a burglary for ACCA purposes. See id at 599. Since Fla. Stat. § 810.02 defines dwelling to include both the structure and its surrounding curtilage, Taylor rendered it **impossible** to hold that § 810.02 was categorically a violent felony under the ACCA's enumerated felonies clause. After Taylor abrogated Hill, it was then clearly established that Florida burglary would be classified as a **residual clause** felony.

Therefore, Petitioner's argument was never about which clause/category his Florida burglaries were classified under, but will always be that he is now serving a sentence under the unconstitutional **residual clause** pursuant to Johnson.

A proper calculation of Petitioner's correct guidelines will show that Petitioner's 262 month sentence is triple his proper maximum sentence and in addition show that he has already completed the 10 years that was the maximum amount of time he could serve in prison for his § 922(g) conviction.

To support that Petitioner was sentenced under the **residual clause** see Exhibit "A" with this application. Petitioner therein [in 1991], plead "innocent" [see pg. 6 of Exhibit "A"], to all charges of entry into any **building or structure**, but "Only" agreed to accept the 'penalty' for the charges in exchange for pleading "innocent" to **never entering** a building /structure.

Therefore, for a fact shown by contract record of the state, Petitioner **never** had an "enumerated clause" style burglary attributed to his existing record.

It then follows that Petitioner was in fact, convicted of **residual clause** burglaries [for ACCA enhancement] at his federal sentencing and those **residual clause** felonies can't be used for the purposes of the unconstitutionally vague ACCA

enhancement in this case. See Johnson and Welch.

The district court even during it's sentencing read from Petitioner's PSR document while also reading from his plea document of contract that was established with the State of Florida concerning the burglaries. That court stated during sentencing concerning the prior burglaries: "I don't know how many times he has been convicted of burglary of dwellings, armed burglary, burglary, burglary, burglary, burglary, burglary, burglary, and it seems he wiped out a lot of them at one time by pleading to them." 12/14/97 Sent. Tr. 8; see ibid. Again, Petitioner's Plea contract shows he plead "innocent" to any act of having entered a building or structure, and is, thus, now being held in prison under the vague criminal law of the **residual clause**. See pg.6 of Exhibit "A". Petitioner's present incarceration is, therefore, Unconstitutional. See Sent. Tr. [8] record at Exhibit "C".

Therefore, Petitioner's factual record of documents clearly show he is entitled to habeas relief due to the unconstitutionally vague **residual clause** [and "only" the **residual clause**] being wrongly applied in his case.

Further, Petitioner, therefore, doesn't have the three "violent felonies" necessary for the ACCA statute application in this case and is now serving an illegal sentence without application of a statute. Petitioner is, thus, being held in incarceration in violation of our Constitution.

In the Eleventh Circuit, when a Petitioner raises a Johnson claim, he must show that it is "more likely than not [that] he in fact was sentenced as an Armed Career Criminal under the **residual clause**." See Beeman v. United States, 871 F.3d 1215, 1225 (11th Cir. 2017).

A petitioner cannot make this showing if "nothing in the record suggests that the district court relied on only the **residual clause** in sentencing him." Id. at 1224. Similarly, a petitioner's "conclusory" assertion "that the district court must have relied on the **residual clause**" does not suffice to make this showing if "nothing in the record supports this argument." Id.

By contrast, a petitioner may establish a Johnson claim by pointing to "precedent ... holding, or ... otherwise making obvious, that a [predicate offense] qualified as a violent felony only under the **residual clause**." See id.

Petitioner has above in his previous statements [supported by factual records] met the requirements of showing a true Johnson and Beeman claim in this matter.

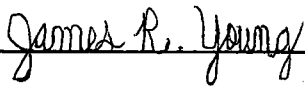
Here, Petitioner, has clearly shown that the district court sentenced him as an Armed Career Criminal under the **residual clause** in this case. It is this part of the definition of a violent felony that didn't survive the Constitution's prohibition of vague criminal laws.

Therefore, Petitioner's **residual clause** sentence under the ACCA violates the due process clause of the Fifth Amendment of our Constitution and establishes that he is being wrongly held in detention beyond the authority of the Constitution and without due process. Petitioner therefore requests rehearing.

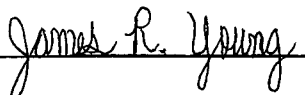
CONCLUSION

Wherefore, based on the above "other substantial grounds not previously presented" pursuant to Rule 44.2, and the "intervening circumstances of a substantial or controlling effect" involving the recent holdings in [Rosales-Mireles v. United States, No. 16-9493], Petitioner humbly asks that the denial of his "Petition for Writ of Certiorari" in this case be reversed due to the new development and discoveries in this case. Petitioner further requests that he be granted authority review pursuant to Rosales-Mireles for erroneous guideline issues in his case, and that counsel be appointed for these matters. See Sent. Tr. 8 - for record guideline error - at Ex."C".

Respectfully submitted,


JAMES R. YOUNG 10205-017

I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 29, 2018.



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— PETITIONER

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VS.

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— RESPONDENT(S)

STATEMENT OF CERTIFICATION BY A PRO SE PETITIONER

In this Petitioner's Statement Of Certification in accordance to the requirements of Supreme Court Rule 44.1, Petitioner would simply like to Certify Pro se, that his Petition Request for Rehearing is presented in good faith and not for any purposes of delay. Further, Petitioner's request is being made pursuant to "intervening circumstances of a substantial or controlling effect", in addition to "other substantial grounds not previously presented". See Rule 44.2. Petitioner in his Petition for Rehearing has established that this Court's recent holdings in [Rosales-Mireles v. United States, No. 16-9493] applies to the requestings in his case, and he also presented **new fact** records to support his sentence under the residual clause. The names and addresses of those served are as follows:

<u>Solicitor General of the United States, Room 5616 /</u>	<u>Manuel Ocasio, Warden</u>
<u>Department of Justice</u>	<u>Coleman FCC</u>
<u>950 Pennsylvania Avenue, N.W.</u>	<u>846 NE 54th Terrace</u>
<u>Washington, DC 20530-0001</u>	<u>Coleman, Florida 33521</u>

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 29, 2018

James R. Young
(Signature)

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