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IN THE
Supreme Court of the United States

DEREK CAPOZZI,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

DANA GOLDBLATT
Counsel of Record
LAW OFFICE OF DANA GOLDBLATT
150 Main Street, Rm. 395
P.O. Box 85
Northampton, MA 01060
413-570-4136
dana@danagoldblattlaw.com

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I. QUESTIONS PRESENTED

1. Whether, to qualify under 18 U.S.C. § 2255 for relief from a sentence enhancement imposed by operation of the now-abrogated residual clause of 18 U.S.C. § 924(e)(2)(B)(ii), a criminal defendant must prove that the sentencing court relied "solely" on the residual clause to impose the enhancement or whether it is sufficient to establish that that the sentencing court "may have" relied on the residual clause.
2. Whether retroactive relief from a sentence enhancement based solely on the now-abrogated residual clause of 18 U.S.C. § 924(e)(2)(B)(ii) is available under *Welch v. United States*, 578 U.S. 120, 134-135 (2016), to a criminal defendant who did not challenge the enhancement until after this Court abrogated the enhancement in *Johnson v. United States*, 576 U.S. 591 (2015).

II. LIST OF PROCEEDINGS

1. United States District Court for the District of Massachusetts, Docket Number 1:98-CR-10087-PBS, United States v. Derek Capozzi, April 13, 2000 (judgment) and March 29, 2022 (amended judgment).
2. First Circuit Court of Appeals, Appeal Number 00-1670, *United States v. Capozzi*, 347 F.3d 327 (1st Cir. 2003), October 6, 2003.
3. First Circuit Court of Appeals, Appeal Number 15-2448, *United States v. Capozzi*, December 11, 2019.
4. First Circuit Court of Appeals, Appeal Number 22-1243, *United States v. Derek Capozzi*, 09/23/2025.

III. OPINIONS AND ORDERS BELOW

The United States District Court for the District of Massachusetts partially allowed and partially denied Petitioner's motion pursuant to 28 U.S.C. § 2255 in an unpublished decision on March 31, 2021. (Appendix ("App."))

2.) The United States District Court for the District of Massachusetts issued an amended judgment on March 29, 2022. (App. 19.) The decision of the First Circuit Court of Appeals denying Petitioner's appeal of the denial is reported as *United States v. Capozzi*, 142 F.4th 91 (2025). (App. 26.) The First Circuit Court of Appeals denied rehearing and rehearing en banc on September 23, 2025. (App. 32.)

IV. JURISDICTION

The First Circuit Court of Appeals denied the request for en banc review on September 23, 2025. This Court has jurisdiction pursuant 28 U.S.C. § 1254(1).

V. CONSTITUTIONAL PROVISIONS AND RULES

18 U.S.C. § 924(e) (1998)

28 U.S.C. § 2255

VI. STATEMENT OF THE CASE

On November 16, 1999, Petitioner was convicted of being a felon in possession of a firearm, 18 U.S.C. § 922(g); attempted extortion affecting interstate commerce, 18 U.S.C. § 1951(a); and using a firearm in furtherance of a crime of violence (to wit, the attempted extortion, 18 U.S.C. § 924(c)).

On April 13, 2000, he was sentenced as an Armed Career Criminal (“ACC”) pursuant to 18 U.S.C. § 924(e).

After this Court decided *Johnson v. United States*, 576 U.S. 591 (2015), Petitioner timely filed a motion pursuant to 28 U.S.C. § 2255. He argued his sentence as an ACC was *per se* unlawful without reference to the abrogated residual clause of 18 U.S.C. § 924(e)(2)(B)(ii) because. When sentenced, he had not been convicted of three predicate offenses as defined in either the enumerated felony clause, 18 U.S.C. § 924(e)(2)(B)(ii) (1998), or the force clause, § 924(e)(2)(B)(i).

The First Circuit ultimately held that, even if “the court's reliance on the enumerated clause at the time of his original sentencing was legally impossible, and thus

mistaken, under *Taylor v. United States*” the Petitioner was not entitled to retroactive relief under *Johnson* as a matter of law because he had not “brought any § 2255 motion on that ground [challenging his ACC enhancement] within one year of the final judgment against him[.]” (Add.30.)

VII. REASONS FOR GRANTING THE PETITION (ARGUMENT)

The First Circuit’s opinion is contrary to this Court’s holding in *Welch v. United States*, 578 U.S. 120, 134–135 (2016), that the abrogation of the residual clause in *Johnson* is retroactive on collateral review. It also conflicts with the authoritative decisions of other circuits.

A. There is a circuit split.

The Fourth, Fifth, and Ninth Circuits have all held that a petitioner’s claim is viable under *Johnson* and *Welch* if the petitioner can show that the sentencing court “may have” relied on the residual clause. *United States v. Geozos*, 870 F.3d 890, 896 (9th Cir. 2017); *United States v. Winston*, 850 F.3d 677, 682 (4th Cir. 2017); *United States v. Taylor*, 873 F.3d 476,

480 (5th Cir. 2017). The First Circuit imposes a higher standard of proof - that a defendant's ACCA sentence is "solely based based solely on the residual clause." (Add.30) (emphasis added).

B. Conflict with *Welch*.

Even assuming *arguendo* that criminal defendants are entitled to relief from ACCA enhancements under *Johnson* only if the sentencing court relied solely on the residual clause in imposing the ACCA enhancement, the First Circuit's decision conflicts directly with the decision of the United States Supreme Court in *Welch v. United States*, 578 U.S. 120, 141 (2016). In *Welch*, this Court made *Johnson*, retroactive to defendants. Relief from ACCA enhancements under the residual clause is available to criminal defendants if the *Johnson* decision is what "deprived the State of the power to impose [the ACCA enhancement.]" *Id.*

The First Circuit thwarts retroactivity by limiting relief to defendants who made a futile, pre-*Johnson* challenge to ACC enhancements. Certiorari should be granted because the

First Circuit is making retroactive relief unavailable to defendants who are entitled to it under *Welch*.

CONCLUSION

For the reasons argued herein, certiorari should be granted.

Respectfully Submitted,

DANA GOLDBLATT
Counsel of Record
LAW OFFICE OF DANA GOLDBLATT
150 Main Street, Rm. 395
P.O. Box 85
Northampton, MA 01060
413-570-4136
dana@danagoldblattlaw.com