

(ORDER LIST: 586 U.S.)

MONDAY, OCTOBER 15, 2018

CERTIORARI -- SUMMARY DISPOSITION

18-5184 HASHIMI, AHMAD S. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of *McCoy v. Louisiana*, 584 U. S. ____ (2018).

ORDERS IN PENDING CASES

18M50 LYON, LeFLORIS V. CANADIAN NAT. RAILWAY, ET AL.

18M51 ZAREMBA FAMILY FARMS, ET AL. V. ENCANA OIL & GAS INC.

18M52 REID, WILLIAM S. V. UNITED STATES

The motions for leave to file petitions for writs of certiorari with the supplemental appendices under seal are granted.

18M53 SMITH, TRACEY V. FOOD BANK OF EASTERN MICHIGAN

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

18M54 MCGHEE, TIMOTHY J. V. DAVIS, WARDEN

The motion for leave to file a petition for a writ of certiorari with the supplemental appendix under seal is granted.

18M55 RAFI, SYED K. V. BRIGHAM & WOMEN'S HOSP., ET AL.

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

18-5621 TORKORNOO, BISMARCK K. V. HELWIG, NINA, ET AL.

18-5982 BRITTON-HARR, TODD F. V. UNITED STATES

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until November 5, 2018, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI DENIED

17-1575 YONG, ALWASI V. PENNSYLVANIA

17-1624 CITIZEN POTAWATOMI NATION V. OKLAHOMA

17-1713 EMERSON ELECTRIC CO., ET AL. V. SUPERIOR COURT OF CA, ET AL.

17-7929 BROWN, ARTHUR V. TEXAS

17-8462 PETRAS, JONATHAN K., ET AL. V. UNITED STATES

17-8495 VELEZ, ROBERT V. UNITED STATES

17-8853 DIXON, DEANTE V. UNITED STATES

17-9326 KORNSE, DONALD C. V. UNITED STATES

17-9436 VEGA, JUAN F. V. GERMAINE, ROBERT W.

17-9458 PORTER, LERON V. RHODE ISLAND

18-84) CONAGRA GROCERY PRODUCTS, ET AL. V. CALIFORNIA

18-86) SHERWIN-WILLIAMS CO. V. CALIFORNIA

18-124 TWO-WAY MEDIA LTD. V. COMCAST CABLE, ET AL.

18-167 MCC HEAVY INDUSTRIAL EQUIPMENT V. LIEBHERR MINING & CONSTRUCTION

18-176 CONESTOGA TRUST SERVICES, LLC V. SUN LIFE ASSURANCE CO. OF CANADA

18-181 KLAYMAN, LARRY E. V. LUCK, STEPHANIE A.

18-198 CELLI, LUCIO V. NYC DEPT. OF EDUCATION, ET AL.

18-200 MICHIGAN V. JONES, CHARLES D.

18-201 MONTAZER, PARVIZ V. MONTAZER, PARVIN R.

18-205 NORTHERN CA WATER ASSN., ET AL. V. CA STATE WATER RESOURCES, ET AL.

18-224 PICKENS, LUKE O. V. BREVARD POLICE TESTING
18-258 EL-KHALIDI, HATEM V. ARABIAN AMERICAN DEVELOPMENT CO.
18-293 FARKAS, JANOS V. OCWEN LOAN SERVICING, ET AL.
18-303 OLEKSY, HENRYK V. GENERAL ELECTRIC CO.
18-342 MAPLEWOOD, MO V. WEBB, CECELIA R., ET AL.
18-368 THOMAS, CEDRICK V. COZZI, JEFFREY
18-5168 PALACIOS, JOSE V. UNITED STATES
18-5191 PANIAGUA-PANIAGUA, JOSE V. UNITED STATES
18-5222 COOPER, CORVAIN T. V. UNITED STATES
18-5529 TERRY, DEWEY S. V. EARLEY, PHILLIP, ET AL.
18-5530 KALDAWI, VICTORIA E. V. KUWAIT, ET AL.
18-5557 BUSSING, MATTHEW J. V. MICHIGAN
18-5558 ATWELL, JOSEPH W. V. FERGUSON, SUPT., GRATERFORD
18-5562 PIERRE, ALBERT N. V. VANNOY, WARDEN
18-5563 BRUTON, PETER C. V. DAVIS, DIR., TX DCJ
18-5569 WEISNER, SEAN V. DAVIS, DIR., TX DCJ
18-5570 VARGAS, ILICH V. SUPERIOR COURT OF CA
18-5571 WILKINS, KEENAN G. V. CONTRA COSTA COUNTY, CA, ET AL.
18-5572 WELLS, JOHN E. V. GRAY, WARDEN
18-5581 JENEWICZ, GEORGE V. NEW JERSEY
18-5582 KISSNER, DONALD L. V. MICHIGAN
18-5584 THOMPSON, LAWRENCE L. V. COPELAND, PETE, ET AL.
18-5586 KNIGHT, WILLIAM V. FLORIDA
18-5589 DEMA, VICTOR O. V. ALLEGIANT AIR LLC
18-5590 JOHNSON, VERONICA M. V. VIRGINIA, ET AL.
18-5591 MASON, VALERIE V. POLSTER, JUDGE, USDC, ET AL.
18-5592 MADRID, OSCAR V. VANNOY, WARDEN
18-5595 WILLIAMS, KEITH L. V. SOOD, KUL, ET AL.

18-5596 WALLACE, GEORGE V. BARNES, WARDEN
18-5602 LEONARD, STEPHEN D. V. FLORIDA
18-5608 MATA, ANDRES V. DAVIS, DIR., TX DCJ
18-5610 SAXENA, RAM V. ABUD, NABILSI Y.
18-5611 STEWART, PHILLIP D. V. STUKEY, RONALD J.
18-5619 CONTRERAS, RALPH R. V. ANGLEA, WARDEN
18-5625 CREW, ARRION L. V. MONTGOMERY, ACTING WARDEN
18-5627 WEBB, CARL A. V. DAVIS, DIR., TX DCJ
18-5628 TACQUARD, JOHN R. V. ARIZONA
18-5629 CHANEY, JERMAINE D. V. DAVIS, DIR., TX DCJ
18-5632 LEONOR, JUAN L. V. FRAKES, DIR., NE DOC
18-5635 JACKSON, CHARLES A. V. DAVIS, DIR., TX DCJ
18-5637 DESIR, AFELIX V. FLORIDA
18-5643 CRAFT, NATHAN V. BONDS, ADM'R, SOUTH WOODS
18-5668 BLACKLEDGE, THOMAS V. UNITED STATES
18-5677 LOUGHNER, ROBERT A. V. CLARKE, DIR., VA DOC
18-5728 EARNEST, WESLEY B. V. DAVIS, WARDEN, ET AL.
18-5769 SMITH, EDWARD V. EPPINGER, WARDEN
18-5794 DAVIS, RONNIE K. V. MADDIE, BENJAMIN
18-5857 LATIMORE, JEFFREY V. JONES, SEC., FL DOC
18-5859 PEREZ, EPIFANIO M. V. SESSIONS, ATT'Y GEN.
18-5868 CANNON, WILLIAM D. V. CLARKE, DIR., VA DOC
18-5889 WELCH, JAMES R. V. JONES, SEC., FL DOC, ET AL.
18-5902 ALLEN, TERRENCE J. V. CLARKE, DIR., VA DOC
18-5905 MOORE, CORTEZ V. ILLINOIS
18-5922 SARHAN, ROBERT J. V. FEDERAL BUREAU OF PRISONS
18-5937 BURTON, CHARLES L. V. ALABAMA
18-5941 TIPPENS, ROBERT E. V. VIRGINIA

18-5949 MORRIS, CHARLES L. V. JONES, SEC., FL DOC
18-5950 MILLER, ARTIS R. V. UNITED STATES
18-5956 WHITNEY, JAMES E. V. ARKANSAS
18-5957) ARCILA, RAUL V. UNITED STATES
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18-6016) SANDOVAL-RAMOS, FABIAN V. UNITED STATES
18-5964 HACHENEY, NICHOLAS V. OBENLAND, SUPT., MONROE
18-5966 FAULKNER, JOSEPH V. UNITED STATES
18-5967 HOWARD, MATTHEW W. V. UNITED STATES
18-5970 GORION, ALLEN D. V. UNITED STATES
18-5971 FORTIN, DONAVAN T. V. CAIN, SUPT., SNAKE RIVER
18-5972 FAYE, ASSANE V. UNITED STATES
18-5973 RAMIREZ-DE JESUS, ALVIN V. UNITED STATES
18-5978 REGISTER, JOHN R. V. UNITED STATES
18-5979 DERRY, MALIK V. UNITED STATES
18-5983 CHARLTON, LOUIS V. UNITED STATES
18-5987 HAMMOND, AJOHNTAE V. UNITED STATES
18-5992 BUTLER, AMILCAR C. V. UNITED STATES
18-5994 WHITE, RICKY W. V. ARKANSAS
18-5996 BARRIS, GENE L. V. UNITED STATES
18-5997 BURCIAGA, FRANCISCO V. UNITED STATES
18-6006 TOVAR, GERSON G. V. UNITED STATES
18-6007 WILLIAMS, VALERIE L. V. UNITED STATES
18-6008 PAGAN-ROMERO, ANIBAL V. UNITED STATES
18-6010 PATEL, BABUBHAI V. UNITED STATES
18-6012 WILSON, LUCIOUS V. SOTO, WARDEN
18-6014 VEGA-OROZCO, JAVIER V. UNITED STATES
18-6020 RODGERS, STEFAN V. MILLER, WARDEN
18-6023 BLACKWELL, LAMAR A. V. HANSEN, WARDEN, ET AL.

18-6024 BROWN, ERIC S. V. UNITED STATES
18-6028 BAUM, MAURICE V. UNITED STATES
18-6030 SMITH, JASON M. V. UNITED STATES
18-6031 ROBINSON, NOAH R. V. UNITED STATES
18-6033 MYERS, RAYMOND D. V. OSBORNE, WARDEN
18-6036 HARDEN, DONALD S. V. UNITED STATES
18-6041 BURSE, ROBERT V. UNITED STATES
18-6042 ARY, RONALD E. V. UNITED STATES
18-6046 SKILLERN, MICHAEL V. UNITED STATES
18-6049 SMITH, ROBERT W. V. UNITED STATES
18-6060 CHAVEZ, JAMES V. LeGRAND, WARDEN, ET AL.
18-6063 ALEXANDER, CRAIG V. UNITED STATES

The petitions for writs of certiorari are denied.

17-508 LIVNAT, RIVKA, ET AL. V. PALESTINIAN AUTHORITY

The petition for a writ of certiorari is denied. Justice Kavanaugh took no part in the consideration or decision of this petition.

17-1656 VIOLET DOCK PORT, INC., LLC V. ST. BERNARD PORT DISTRICT

The motion of NFIB Small Business Legal Center, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

17-8368 MOLETTE, GREGORY V. UNITED STATES

17-8637 GIPSON, BOBBY JO V. UNITED STATES

17-8746 WILSON, CARLOS V. UNITED STATES

The petitions for writs of certiorari are denied. Justice Sotomayor, dissenting from the denial of certiorari: I dissent for the reasons set out in *Brown v. United States*, 586 U. S. ____ (2018) (Sotomayor, J., dissenting).

17-8775 GREER, JASON V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Sotomayor, dissenting from the denial of certiorari: I dissent for the reasons set out in *Brown v. United States*, 586 U. S. ____ (2018) (Sotomayor, J., dissenting). Justice Gorsuch took no part in the consideration or decision of this petition.

17-9045 HOMRICH, ROBERT V. UNITED STATES

17-9379 CHUBB, CHARLES V. UNITED STATES

17-9400 SMITH, TERRANCE V. UNITED STATES

17-9411 BUCKNER, JOHN E. V. UNITED STATES

17-9490 LEWIS, PAUL V. UNITED STATES

The petitions for writs of certiorari are denied. Justice Sotomayor, dissenting from the denial of certiorari: I dissent for the reasons set out in *Brown v. United States*, 586 U. S. ____ (2018) (Sotomayor, J., dissenting).

18-5998 BIGGINS, KEITH L. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this petition.

HABEAS CORPUS DENIED

18-6048 IN RE DANIEL A. SPOTTSVILLE

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of habeas corpus is dismissed. See Rule 39.8.

18-6054 IN RE MICHAEL BOONE

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of habeas corpus is dismissed. See Rule 39.8. Justice Kagan took no part in the

consideration or decision of this motion and this petition.

18-6065 IN RE ERIC M. RICHARDSON

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of habeas corpus is dismissed. See Rule 39.8.

MANDAMUS DENIED

18-5968 IN RE JOSE P. GRACIA-CANTU

The petition for a writ of mandamus is denied.

18-6018 IN RE GARY I. TERRY

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of mandamus is dismissed. See Rule 39.8. Justice Kagan took no part in the consideration or decision of this motion and this petition.

REHEARINGS DENIED

17-7972 BARNES, CAROLYN V. TEXAS

The petition for rehearing is denied.

17-6147 SAPPINGTON, WILLIAM V. OLDHAM, SHERIFF

The motion for leave to file a petition for rehearing is denied.

SOTOMAYOR, J., dissenting

SUPREME COURT OF THE UNITED STATES

THILO BROWN *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 17–9276. Decided October 15, 2018

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting from denial of certiorari.

Today this Court denies petitioners, and perhaps more than 1,000 like them, a chance to challenge the constitutionality of their sentences.¹ They were sentenced under a then-mandatory provision of the U. S. Sentencing Guidelines, the exact language of which we have recently identified as unconstitutionally vague in another legally binding provision. These petitioners argue that their sentences, too, are unconstitutional. This important question, which has generated divergence among the lower courts, calls out for an answer. Because this Court’s decision to deny certiorari precludes petitioners from obtaining such an answer, I respectfully dissent.

Petitioner Thilo Brown, like others whose petitions the Court denies today, was sentenced as a “career offender” under the U. S. Sentencing Guidelines. United States Sentencing Commission, Guidelines Manual §4B1.1(a) (Nov. 2004) (USSG). At the time, those Guidelines were mandatory. They were “binding on judges” and carried

¹In addition to Thilo Brown’s petition, this Court denies the petitions of Gregory Molette, No. 17–8368; Bobby Jo Gipson and Keith Walker, No. 17–8637; Carlos Wilson, No. 17–8746; Jason Greer, No. 17–8775; Robert Homrich, No. 17–9045; Charles Chubb, No. 17–9379; Terrance Smith, No. 17–9400; John Elwood Buckner, No. 17–9411; and Paul Lewis, No. 17–9490. For the reasons expressed herein, I respectfully dissent from denial of certiorari in their cases as well.

SOTOMAYOR, J., dissenting

“the force and effect of laws.”² *United States v. Booker*, 543 U. S. 220, 234 (2005).³ The Guidelines directed enhanced punishment for “career offender[s].” See USSG §4B1.1(a). Defendants qualified as “career offender[s]” if they had “at least two prior felony convictions of either a crime of violence or a controlled substance offense.” *Ibid.* There were different ways that a past conviction could count as “a crime of violence,” but only one is at issue here: A conviction counted as “a crime of violence” if it “involve[d] conduct that presents a serious potential risk of physical injury to another.” §4B1.2(a)(2) (Nov. 2002). Because it supplied an amorphous catchall at the end of a more definite list, that phrase has been known as the “residual clause.” If the phrase sounds familiar, it may be because in *Johnson v. United States*, 576 U. S. ___ (2015), this Court considered the exact same language in another provision where it was binding on judges and had the force and effect of law: a statute called the Armed Career Criminal Act (ACCA), 18 U. S. C. §924(e). Like the Guidelines,

²This Court accordingly ruled that the mandatory Guidelines violated the Sixth Amendment. See *United States v. Booker*, 543 U. S. 220, 226–227 (2005). The Court then rendered the Guidelines advisory by striking down the provisions that had made them mandatory. See *id.*, at 245.

³Indeed, before *Booker*, this Court consistently held that the Sentencing Guidelines “b[ound] judges and courts in their uncontested responsibility to pass sentence in criminal cases.” *Mistretta v. United States*, 488 U. S. 361, 391 (1989); see also *Stinson v. United States*, 508 U. S. 36, 42 (1993) (“The principle that the Guidelines Manual is binding on federal courts applies as well to policy statements”). The lower courts heeded that instruction. See *United States v. Hendricks*, 171 F. 3d 1184, 1186 (CA8 1999) (“The sentencing guidelines are, of course, binding on federal district courts”); accord, *United States v. Lafayette*, 337 F. 3d 1043, 1051–1052 (CA9 2003); *United States v. Stephens*, 347 F. 3d 427, 430 (CA2 2003); *United States v. Barbosa*, 271 F. 3d 438, 465 (CA3 2001); *United States v. Bahe*, 201 F. 3d 1124, 1129, n. 5 (CA9 2000); *United States v. Harriott*, 976 F. 2d 198, 202–203 (CA4 1992); *United States v. Lee*, 957 F. 2d 770, 772 (CA10 1992).

SOTOMAYOR, J., dissenting

the ACCA also required enhanced punishments for career offenders. And, like the Guidelines, the ACCA included its own residual clause. In fact, the ACCA’s residual clause was identical to the Guidelines’ residual clause. See §924(e)(2)(B)(ii) (“ . . . involves conduct that presents a serious potential risk of physical injury to another”).

Johnson struck down the ACCA’s residual clause as unconstitutionally vague. 576 U. S., at ____ (slip op., at 3). You might think that if a sequence of words that increases a person’s time in prison is unconstitutionally vague in one legally binding provision, that same sequence is unconstitutionally vague if it serves the same purpose in another legally binding provision. Indeed, after *Johnson*, the Sentencing Commission deleted the residual clause from the Guidelines. See USSG §4B1.2(a)(2) (Nov. 2016). But for petitioners like Brown, who were sentenced long before *Johnson*, this Court has thus far left the validity of their sentences an open question. See *Beckles v. United States*, 580 U. S. ____, ____, ____–____ (2017) (slip op., at 5, 9–10); *id.*, at ____, n. 4 (slip op., at 10, n. 4) (SOTOMAYOR, J., concurring). The Court’s decision today all but ensures that the question will never be answered.

In these petitions, that question largely overlaps with a related, timeliness question: whether Brown and his fellow petitioners may rely on the right announced in *Johnson*, in the ACCA context, to attack collaterally their mandatory-Guidelines sentences. Federal law imposes on prisoners seeking to mount collateral attacks on final sentences “[a] 1-year period of limitation . . . from the latest of” several events. See 28 U. S. C. §2255(f). One event that can reopen this window is this Court “newly recogniz[ing]” a right and making that right “retroactively applicable to cases on collateral review.” §2255(f)(3). The right recognized in the ACCA context in *Johnson*, we have held, is retroactive on collateral review. *Welch v. United States*, 578 U. S. ____, ____ (2016) (slip op., at 9).

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The question for a petitioner like Brown, then, is whether he may rely on the right recognized in *Johnson* to challenge identical language in the mandatory Guidelines. Three Courts of Appeals have said no. See 868 F. 3d 297 (CA4 2017) (case below); *Raybon v. United States*, 867 F. 3d 625 (CA6 2017); *United States v. Greer*, 881 F. 3d 1241 (CA10 2018). One Court of Appeals has said yes. See *Cross v. United States*, 892 F. 3d 288 (CA7 2018). Another has strongly hinted yes in a different posture, after which point the Government dismissed at least one appeal that would have allowed the court to answer the question directly. See *Moore v. United States*, 871 F. 3d 72, 80–84 (CA1 2017); see also *United States v. Roy*, 282 F. Supp. 3d 421 (Mass. 2017); *United States v. Roy*, Withdrawal of Appeal in No. 17–2169 (CA1). One other court has concluded that the mandatory Guidelines themselves cannot be challenged for vagueness. See *In re Griffin*, 823 F. 3d 1350, 1354 (CA11 2016).

Regardless of where one stands on the merits of how far *Johnson* extends, this case presents an important question of federal law that has divided the courts of appeals and in theory could determine the liberty of over 1,000 people.⁴ That sounds like the kind of case we ought to hear. See this Court’s Rules 10(a), (c).⁵ Because the Court nevertheless declines to do so, I respectfully dissent.

⁴See Brief for Eight Federal Public Defender Offices as *Amici Curiae* in No. 16–7056 (CA4), pp. 1a–5a (estimating 1,187 cases pending nationwide).

⁵Rule 10 sets forth situations that can weigh in favor of certiorari, although they are “neither controlling nor fully measuring the Court’s discretion.” Rule 10(a) points to a situation in which “a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter.” Rule 10(c) points to a situation in which “a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court.”