

FILED

AUG 14 2016

**Clerk, U.S. District and
Bankruptcy Courts**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STANDING ORDER NO. 3
RE: RETROACTIVE APPLICATION OF *JOHNSON V. UNITED STATES*

This Standing Order supplements and modifies the Standing Orders issued by this Court on June 2, 2016 (“Standing Order”) and September 9, 2016 (“Standing Order No. 2”), concerning the retroactive application of *Johnson v. United States*, 135 S. Ct. 2551 (2015). On September 29, 2016, the Supreme Court of the United States granted *certiorari* in *Lynch v. Dimaya*, No. 15-1498 (U.S. Sept. 29, 2016), in order to decide whether the residual clause of the definition of a “crime of violence” in 18 U.S.C § 16(b), as incorporated into the Immigration and Nationality Act, is unconstitutionally vague. The residual clause in 18 U.S.C. § 16(b) is worded in a materially identical manner to the residual clause in 18 U.S.C. § 924(c)(3)(B).

Pursuant to the original Standing Order, issued June 2, 2016, this Court authorized the Office of the Federal Public Defender to file abridged motions seeking relief pursuant to 28 U.S.C. § 2255 by June 26, 2016 in order to meeting the filing deadline for retroactive application of *Johnson*. It further required the filing of a supplemental motion fully briefing the issues raised in any such abridged motion by October 26, 2016. In light of the fact that the Supreme Court will not have decided *Dimaya* by that date, and because the decision in *Dimaya* may affect the arguments the Federal Public Defender and the United States Attorney make with respect to certain defendants, the Court further supplements and modifies its June 2, 2016 Standing Order as indicated below. In all other respects, the original Standing Order and Standing Order No. 2 remain in full force and effect.

In any case in which a defendant has filed an abridged motion pursuant to 28 U.S.C. § 2255 that: (1) only raises challenges to the definition of “crime of violence” set forth in 18 U.S.C. § 924(c)(3)(B), based on *Johnson v. United States*, 135 S. Ct. 2551 (2015); or (2) raises challenges both to the definition of “crime of violence” set forth in 18 U.S.C. § 924(c)(3)(B) and to the definition of “crime of violence” set forth in U.S.S.G. § 4B1.2(a)(2), based on *Johnson v. United States*, 135 S. Ct. 2551 (2015), the scheduled October 26, 2016 date for filing a supplemental motion fully briefing the issues presented in an abridged motion shall be extended until after the Supreme Court issues a decision in *Lynch v. Dimaya*, No. 15-1498. After that decision is issued, this Court will issue a supplemental Standing Order setting the date by which the supplemental motions in the above-referenced cases must be filed. The Federal Public Defender shall not be prohibited from filing motions in individual cases seeking to litigate the case before *Dimaya* is decided, nor shall the government be prohibited from opposing such motions.

This Order is effective immediately.

SO ORDERED.

Date: October 14, 2016



Digitally signed by Hon.
Beryl A. Howell
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Court for the District of
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BERYL A. HOWELL
Chief Judge