

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: : **STANDING ORDER 15-06**
:
APPOINTMENT OF COUNSEL IN :
PROCEEDINGS RELATING TO :
THE APPLICATION OF :
JOHNSON v. UNITED STATES :
135 S.Ct. 2551 (2015) :

ORDER

WHEREAS on June 26, 2015, the United States Supreme Court decided *Johnson v. United States*, ___ U.S. ___, 135 S.Ct. 2551 (2015) and held that the residual clause of the Armed Career Criminal Act (ACCA) is unconstitutionally vague and that increasing a defendant's sentence under the residual clause denies due process of law.

WHEREAS the United States Court of Appeals for the Third Circuit has consistently relied on cases interpreting the ACCA's residual clause to inform decisions relating to the identically worded residual clause in the career offender guideline of the United States Sentencing Guidelines, Section 4B1.2(a)(2). *See United States v. Marrero*, 743 F.3d 389, 394 n.2 (3d Cir. 2014)(citing *Hopkins v. United States*, 555 U.S. 1132 (2009)).

THEREFORE, IT IS ORDERED THAT, pursuant to the Criminal Justice Act, Title 18, U.S.C. §§ 3006A(a)(1) and (c), and because of the need to efficiently process petitions under *Johnson v. United States*, 135 S. Ct. 2551 (2015), the Office of the Federal Public Defender for the Middle District of Pennsylvania is appointed to represent all criminal defendants who were previously sentenced in the Middle

District of Pennsylvania who may be eligible to seek a reduced sentence based upon the application of *Johnson*.

Financial eligibility for appointment of counsel will be presumed if the defendant was previously determined to have been entitled to appointment of counsel or found indigent by this Court. Defendants who were previously represented by private counsel, or who were determined to have sufficient assets to reimburse the Criminal Justice Act appropriation shall provide this Court with a current Financial Affidavit to determine the appropriateness of any appointment under the Criminal Justice Act. In the event the Federal Public Defender is unable to represent a defendant in such proceedings, the Federal Public Defender shall designate an attorney in accordance with the Criminal Justice Act Plan of the United States District Court for the Middle District of Pennsylvania.

The purposes of this appointed representation are as follows:

1. To identify all persons with a claim for relief under *Johnson*.
2. To seek any sentencing relief for such persons by filing for federal habeas relief under either 28 U.S.C. § 2255 or 28 U.S.C. § 2241 in light of *Johnson*, and by presenting any petitions, motions or applications relating thereto to the Court for disposition.
3. To prioritize those persons with a claim for relief that must be acted upon immediately.
4. To maintain communications with all such persons to learn their wishes and to advise them.

5. To identify any conflict of interest that would require the withdrawal of the Federal Public Defender and the appointment of new counsel.

To give effect to the purposes of this order, the United States District Court Clerk's Office and the United States Probation Office for the Middle District of Pennsylvania are hereby authorized and directed to cooperate with the Office of the Federal Public Defender in identifying the persons who may qualify for relief pursuant to *Johnson*. The Probation and Clerk's Offices may provide the Federal Public Defender's Office with relevant, confidential, and sealed information about the potentially eligible defendants. These materials include copies of Presentence Investigation Reports, modifications and addenda to such reports, Judgments, Statements of Reasons, and motions and orders filed pursuant to Federal Rule of Criminal Procedure 35 and Section 5K1.1.

In addition, the Clerk's Office shall promptly notify the Federal Public Defender of all pending *pro se* motions and petitions seeking relief under *Johnson*.

BY THE COURT:



Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania

Dated: November 6, 2015