

Syllabus

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SUPREME COURT OF THE UNITED STATES

Syllabus

WELCH *v.* UNITED STATESCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

No. 15–6418. Argued March 30, 2016—Decided April 18, 2016

Federal law makes the possession of a firearm by a felon a crime punishable by a prison term of up to 10 years, 18 U. S. C. §§922(g), 924(a)(2), but the Armed Career Criminal Act of 1984 increases that sentence to a mandatory 15 years to life if the offender has three or more prior convictions for a “serious drug offense” or a “violent felony,” §924(e)(1). The definition of “violent felony” includes the so-called residual clause, covering any felony that “otherwise involves conduct that presents a serious potential risk of physical injury to another.” §924(e)(2)(B)(ii). In *Johnson v. United States*, 576 U. S. ___, this Court held that clause unconstitutional under the void-for-vagueness doctrine.

Petitioner Welch was sentenced under the Armed Career Criminal Act before *Johnson* was decided. On direct review, the Eleventh Circuit affirmed his sentence, holding that Welch’s prior Florida conviction for robbery qualified as a “violent felony” under the residual clause. After his conviction became final, Welch sought collateral relief under 28 U. S. C. §2255, which the District Court denied. The Eleventh Circuit then denied Welch a certificate of appealability. Three weeks later, this Court decided *Johnson*. Welch now seeks the retroactive application of *Johnson* to his case.

Held: *Johnson* announced a new substantive rule that has retroactive effect in cases on collateral review. Pp. 6–15.

(a) An applicant seeking a certificate of appealability in a §2255 proceeding must make “a substantial showing of the denial of a constitutional right.” §2253(c)(2). That standard is met when “reasonable jurists could debate whether . . . the petition should have been resolved in a different manner.” *Slack v. McDaniel*, 529 U. S. 473, 484. The question whether Welch met that standard implicates a broader

Syllabus

legal issue: whether *Johnson* is a substantive decision with retroactive effect in cases on collateral review. If so, then on the present record reasonable jurists could at least debate whether Welch should obtain relief in his collateral challenge to his sentence. Pp. 6–7.

(b) New constitutional rules of criminal procedure generally do not apply retroactively to cases on collateral review, but new substantive rules do apply retroactively. *Teague v. Lane*, 489 U. S. 288, 310; *Schiro v. Summerlin*, 542 U. S. 348, 351. Substantive rules alter “the range of conduct or the class of persons that the law punishes,” *id.*, at 353. Procedural rules, by contrast, “regulate only the manner of determining the defendant’s culpability.” *Ibid.* Under this framework, *Johnson* is substantive. Before *Johnson*, the residual clause could cause an offender to face a prison sentence of at least 15 years instead of at most 10. Since *Johnson* made the clause invalid, it can no longer mandate or authorize any sentence. By the same logic, *Johnson* is not procedural, since it had nothing to do with the range of permissible methods a court might use to determine whether a defendant should be sentenced under the Act, see *Schiro, supra*, at 353. Pp. 7–9.

(c) The counterarguments made by Court-appointed *amicus* are unpersuasive. She contends that *Johnson* is a procedural decision because the void-for-vagueness doctrine is based on procedural due process. But the *Teague* framework turns on whether the function of the rule is substantive or procedural, not on the rule’s underlying constitutional source. *Amicus*’ approach would lead to results that cannot be squared with prior precedent. Precedent also does not support *amicus*’ claim that a rule must limit Congress’ power to be substantive, see, e.g., *Bousley v. United States*, 523 U. S. 614, or her claim that statutory construction cases are an ad hoc exception to that principle and are substantive only because they implement the intent of Congress. The separation-of-powers argument raised by *amicus* is also misplaced, for regardless of whether a decision involves statutory interpretation or statutory invalidation, a court lacks the power to exact a penalty that has not been authorized by any valid criminal statute. Pp. 10–15.

Vacated and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion.

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 15–6418

GREGORY WELCH, PETITIONER *v.* UNITED STATES
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

[April 18, 2016]

JUSTICE KENNEDY delivered the opinion of the Court.

Last Term, this Court decided *Johnson v. United States*, 576 U. S. ____ (2015). *Johnson* considered the residual clause of the Armed Career Criminal Act of 1984, 18 U. S. C. §924(e)(2)(B)(ii). The Court held that provision void for vagueness. The present case asks whether *Johnson* is a substantive decision that is retroactive in cases on collateral review.

I

Federal law prohibits any felon—meaning a person who has been convicted of a crime punishable by more than a year in prison—from possessing a firearm. 18 U. S. C. §922(g). A person who violates that restriction can be sentenced to prison for up to 10 years. §924(a)(2). For some felons, however, the Armed Career Criminal Act imposes a much more severe penalty. Under the Act, a person who possesses a firearm after three or more convictions for a “serious drug offense” or a “violent felony” is subject to a minimum sentence of 15 years and a maximum sentence of life in prison. §924(e)(1). Because the ordinary maximum sentence for a felon in possession of a firearm is 10 years, while the minimum sentence under

Opinion of the Court

the Armed Career Criminal Act is 15 years, a person sentenced under the Act will receive a prison term at least five years longer than the law otherwise would allow.

The Act defines “violent felony” as

“any crime punishable by imprisonment for a term exceeding one year . . . that—

“(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

“(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.” §924(e)(2)(B).

Subsection (i) of this definition is known as the elements clause. The end of subsection (ii)—“or otherwise involves conduct that presents a serious potential risk of physical injury to another”—is known as the residual clause. See *Johnson, supra*, at ___ (slip op., at 2). It is the residual clause that *Johnson* held to be vague and invalid.

The text of the residual clause provides little guidance on how to determine whether a given offense “involves conduct that presents a serious potential risk of physical injury.” This Court sought for a number of years to develop the boundaries of the residual clause in a more precise fashion by applying the statute to particular cases. See *James v. United States*, 550 U. S. 192 (2007) (residual clause covers Florida offense of attempted burglary); *Begay v. United States*, 553 U. S. 137 (2008) (residual clause does not cover New Mexico offense of driving under the influence of alcohol); *Chambers v. United States*, 555 U. S. 122 (2009) (residual clause does not cover Illinois offense of failure to report to a penal institution); *Sykes v. United States*, 564 U. S. 1 (2011) (residual clause covers Indiana offense of vehicular flight from a law-enforcement

Opinion of the Court

officer). In *Johnson*, a majority of this Court concluded that those decisions did not bring sufficient clarity to the scope of the residual clause, noting that the federal courts remained mired in “pervasive disagreement” over how the clause should be interpreted. *Johnson*, 576 U. S., at ____ (slip op., at 9).

The *Johnson* Court held the residual clause unconstitutional under the void-for-vagueness doctrine, a doctrine that is mandated by the Due Process Clauses of the Fifth Amendment (with respect to the Federal Government) and the Fourteenth Amendment (with respect to the States). The void-for-vagueness doctrine prohibits the government from imposing sanctions “under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.” *Id.*, at ____ (slip op., at 3). *Johnson* determined that the residual clause could not be reconciled with that prohibition.

The vagueness of the residual clause rests in large part on its operation under the categorical approach. The categorical approach is the framework the Court has applied in deciding whether an offense qualifies as a violent felony under the Armed Career Criminal Act. See *id.*, at ____ (slip op., at 4). Under the categorical approach, “a court assesses whether a crime qualifies as a violent felony ‘in terms of how the law defines the offense and not in terms of how an individual offender might have committed it on a particular occasion.’” *Ibid.* (quoting *Begay, supra*, at 141). For purposes of the residual clause, then, courts were to determine whether a crime involved a “serious potential risk of physical injury” by considering not the defendant’s actual conduct but an “idealized ordinary case of the crime.” 576 U. S., at ____ (slip op., at 12).

The Court’s analysis in *Johnson* thus cast no doubt on the many laws that “require gauging the riskiness of conduct in which an individual defendant engages *on a*

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