2       3         4       5         6       7         7       UNITED STATES DISTRICT COURT         8       WESTERN DISTRICT OF WASHINGTON AT SEATTLE         10       TYLER BRESNAHAN, Petitioner, V.       CASE NO. C16-998RAJ ORDER         11       Petitioner, V.       ORDER         12       V.       ORDER         13       UNITED STATES OF AMERICA, IS       CASE NO. C16-998RAJ ORDER         14       UNITED STATES OF AMERICA, IS       Case NO. C16-998RAJ         15       Respondent.       ORDER         16       This matter comes before the Court on Petitioner Tyler Bresnahan's Motion under         18       28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal         19       Custody. Dkt. # 1. For the reasons that follow, the Court DENIES Mr. Bresnahan's motion.         21       Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set aside, or correct his or her sentence "upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack"         26       7	1		HONORABLE RICHARD A. JONES
<ul> <li>4</li> <li>5</li> <li>6</li> <li>7</li> <li>7</li> <li>8</li> <li>9</li> <li>7</li> <li>9</li> <li>7</li> <li>9</li> <li>7</li> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>14</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>10</li> <li>10</li> <li>11</li> <li>11</li> <li>12</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>16</li> <li>17</li> <li>16</li> <li>17</li> <li>17</li> <li>18</li> <li>19</li> <li>10</li> <li>10</li> <li>11</li> <li>12</li> <li>12</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>16</li> <li>17</li> <li>16</li> <li>17</li> <li>16</li> <li>17</li> <li>17</li> <li>18</li> <li>19</li> <li>10</li> <li>11</li> <li>12</li> <li>12</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>16</li> <li>17</li> <li>17</li> <li>18</li> <li>19</li> <li>10</li> <li>11</li> <li>12</li> <li>12</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>18</li> <li>19</li> <li>19</li> <li>10</li> <li>10</li> <li>10</li> <li>10</li> <li>10</li> <li>10</li> <li>10</li> <li>10</li> <li>10</li> <li>11</li> <li>12</li> <li>12</li> <li>12</li> <li>12</li> <li>12</li> <li>12</li> <li>13</li> <li>14</li> <li>14</li> <li>15</li> <li>16</li> <li>16</li> <li>17</li> <li>16</li> <li>16</li> <li>17</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>19</li> <li>10</li> <li>10</li> <li>10</li> <li>10</li> <li>10</li> <li>10</li> <li>10</li> <li>10</li> <l< td=""><td>2</td><td></td><td></td></l<></ul>	2		
5       6         7       UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE         9       TYLER BRESNAHAN, 1         10       TYLER BRESNAHAN, 1         11       Petitioner, 1         12       v.         13       v.         14       UNITED STATES OF AMERICA, 15         15       Respondent.         16       This matter comes before the Court on Petitioner Tyler Bresnahan's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal 20 custody. Dkt. # 1. For the reasons that follow, the Court DENIES Mr. Bresnahan's motion.         11       Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set aside, or correct his or her sentence "upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack"	3		
6       7         7       8         9       10         10       TYLER BRESNAHAN,         11       Petitioner,         12       v.         13       V.         14       UNITED STATES OF AMERICA,         15       Respondent.         16       This matter comes before the Court on Petitioner Tyler Bresnahan's Motion under         18       28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal         19       Custody. Dkt. # 1. For the reasons that follow, the Court <b>DENIES</b> Mr. Bresnahan's motion.         21       Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set aside, or correct his or her sentence "upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack"         26	4		
7       8       UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE         9       TYLER BRESNAHAN, 1       AT SEATTLE         10       TYLER BRESNAHAN, 1       Petitioner, 2       CASE NO. C16-998RAJ 0RDER         13       v.       ORDER         14       UNITED STATES OF AMERICA, 15       Respondent.         16       This matter comes before the Court on Petitioner Tyler Bresnahan's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal 10         17       This matter comes before the Court on Petitioner Tyler Bresnahan's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal 10         19       Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set aside, or correct his or her sentence "upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack"	5		
8       UNITED STATES DISTRICT COURT         9       AT SEATTLE         10       TYLER BRESNAHAN,         11       Petitioner,         12       v.         13       V.         14       UNITED STATES OF AMERICA,         15       Respondent.         16       This matter comes before the Court on Petitioner Tyler Bresnahan's Motion under         18       US.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal         19       Custody. Dkt. # 1. For the reasons that follow, the Court DENIES Mr. Bresnahan's motion.         21       Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set         22       aside, or correct his or her sentence "upon the ground that the sentence was imposed in         23       violation of the Constitution or laws of the United States, or that the court was without         24       jurisdiction to impose such sentence, or that the sentence was in excess of the maximum         25       authorized by law, or is otherwise subject to collateral attack"	6		
AT SEATTLE          9       AT SEATTLE         10       TYLER BRESNAHAN,         11       Petitioner,         12       v.         13       V.         14       UNITED STATES OF AMERICA,         15       Respondent.         16       This matter comes before the Court on Petitioner Tyler Bresnahan's Motion under         18       28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal         19       Custody. Dkt. # 1. For the reasons that follow, the Court <b>DENIES</b> Mr. Bresnahan's motion.         21       Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set         23       aside, or correct his or her sentence "upon the ground that the sentence was imposed in         23       violation of the Constitution or laws of the United States, or that the court was without         24       authorized by law, or is otherwise subject to collateral attack"	7	UNITED STATES DISTRICT COURT	
9       TYLER BRESNAHAN,         11       Petitioner,         12       v.         13       V.         14       UNITED STATES OF AMERICA,         15       Respondent.         16       This matter comes before the Court on Petitioner Tyler Bresnahan's Motion under         18       28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal         19       Custody. Dkt. # 1. For the reasons that follow, the Court <b>DENIES</b> Mr. Bresnahan's motion.         21       Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set         23       aside, or correct his or her sentence "upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without         24       jurisdiction to impose such sentence, or that the sentence was in excess of the maximum         25       authorized by law, or is otherwise subject to collateral attack "	8		
11       Petitioner,       CASE NO. C16-998RAJ         12       v.       ORDER         13       UNITED STATES OF AMERICA,       ORDER         14       UNITED STATES OF AMERICA,       ORDER         15       Respondent.       ORDER         16       7       This matter comes before the Court on Petitioner Tyler Bresnahan's Motion under         18       28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal         19       Custody. Dkt. # 1. For the reasons that follow, the Court <b>DENIES</b> Mr. Bresnahan's motion.         21       Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set         23       aside, or correct his or her sentence "upon the ground that the sentence was imposed in         23       violation of the Constitution or laws of the United States, or that the court was without         24       jurisdiction to impose such sentence, or that the sentence was in excess of the maximum         25       authorized by law, or is otherwise subject to collateral attack?	9		
11       Petitioner,         12       V.         13       V.         14       UNITED STATES OF AMERICA,         15       Respondent.         16       Interview         17       This matter comes before the Court on Petitioner Tyler Bresnahan's Motion under         18       28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal         19       Custody. Dkt. # 1. For the reasons that follow, the Court <b>DENIES</b> Mr. Bresnahan's         20       motion.         21       Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set         23       aside, or correct his or her sentence "upon the ground that the sentence was imposed in         23       violation of the Constitution or laws of the United States, or that the court was without         24       jurisdiction to impose such sentence, or that the sentence was in excess of the maximum         25       authorized by law, or is otherwise subject to collateral attack"	10	TYLER BRESNAHAN,	
13       v.         14       UNITED STATES OF AMERICA,         15       Respondent.         16       This matter comes before the Court on Petitioner Tyler Bresnahan's Motion under         18       28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal         19       Custody. Dkt. # 1. For the reasons that follow, the Court <b>DENIES</b> Mr. Bresnahan's         20       motion.         21       Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set         22       aside, or correct his or her sentence "upon the ground that the sentence was imposed in         23       violation of the Constitution or laws of the United States, or that the court was without         24       jurisdiction to impose such sentence, or that the sentence was in excess of the maximum         25       law, or is otherwise subject to collateral attack"		Petitioner,	CASE NO. C16-998RAJ
14UNITED STATES OF AMERICA, Respondent.1617181718191919101011121314151516171819191010111213141415151617181919101011121314141515161717181919101011121314141515161617171819191010111213141415151616171718191910101011121314141515161617171818		V.	ORDER
Initial       Respondent.         15       Respondent.         16       This matter comes before the Court on Petitioner Tyler Bresnahan's Motion under         18       28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal         19       Custody. Dkt. # 1. For the reasons that follow, the Court DENIES Mr. Bresnahan's         20       motion.         21       Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set         22       aside, or correct his or her sentence "upon the ground that the sentence was imposed in         23       violation of the Constitution or laws of the United States, or that the court was without         24       jurisdiction to impose such sentence, or that the sentence was in excess of the maximum         25       authorized by law, or is otherwise subject to collateral attack "		UNITED STATES OF AMERICA	
<ul> <li>This matter comes before the Court on Petitioner Tyler Bresnahan's Motion under</li> <li>28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal</li> <li>Custody. Dkt. # 1. For the reasons that follow, the Court <b>DENIES</b> Mr. Bresnahan's</li> <li>motion.</li> <li>Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set</li> <li>aside, or correct his or her sentence "upon the ground that the sentence was imposed in</li> <li>violation of the Constitution or laws of the United States, or that the court was without</li> <li>jurisdiction to impose such sentence, or that the sentence was in excess of the maximum</li> <li>authorized by law, or is otherwise subject to collateral attack"</li> </ul>			
<ul> <li>This matter comes before the Court on Petitioner Tyler Bresnahan's Motion under</li> <li>28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal</li> <li>Custody. Dkt. # 1. For the reasons that follow, the Court <b>DENIES</b> Mr. Bresnahan's</li> <li>motion.</li> <li>Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set</li> <li>aside, or correct his or her sentence "upon the ground that the sentence was imposed in</li> <li>violation of the Constitution or laws of the United States, or that the court was without</li> <li>jurisdiction to impose such sentence, or that the sentence was in excess of the maximum</li> <li>authorized by law, or is otherwise subject to collateral attack"</li> </ul>		Respondent.	
<ul> <li>28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal</li> <li>Custody. Dkt. # 1. For the reasons that follow, the Court <b>DENIES</b> Mr. Bresnahan's</li> <li>motion.</li> <li>Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set</li> <li>aside, or correct his or her sentence "upon the ground that the sentence was imposed in</li> <li>violation of the Constitution or laws of the United States, or that the court was without</li> <li>jurisdiction to impose such sentence, or that the sentence was in excess of the maximum</li> <li>authorized by law, or is otherwise subject to collateral attack"</li> </ul>			
<ul> <li>Custody. Dkt. # 1. For the reasons that follow, the Court DENIES Mr. Bresnahan's motion.</li> <li>Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set aside, or correct his or her sentence "upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack"</li> </ul>	171		utioner Tyler Bresnahan's Motion under
<ul> <li>motion.</li> <li>Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set</li> <li>aside, or correct his or her sentence "upon the ground that the sentence was imposed in</li> <li>violation of the Constitution or laws of the United States, or that the court was without</li> <li>jurisdiction to impose such sentence, or that the sentence was in excess of the maximum</li> <li>authorized by law, or is otherwise subject to collateral attack"</li> </ul>			
<ul> <li>Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set</li> <li>aside, or correct his or her sentence "upon the ground that the sentence was imposed in</li> <li>violation of the Constitution or laws of the United States, or that the court was without</li> <li>jurisdiction to impose such sentence, or that the sentence was in excess of the maximum</li> <li>authorized by law, or is otherwise subject to collateral attack"</li> </ul>		28 U.S.C. § 2255 to Vacate, Set Aside, or Correc	t a Sentence by a Person in Federal
<ul> <li>aside, or correct his or her sentence "upon the ground that the sentence was imposed in</li> <li>violation of the Constitution or laws of the United States, or that the court was without</li> <li>jurisdiction to impose such sentence, or that the sentence was in excess of the maximum</li> <li>authorized by law, or is otherwise subject to collateral attack"</li> </ul>	18	28 U.S.C. § 2255 to Vacate, Set Aside, or Correc	t a Sentence by a Person in Federal
<ul> <li>violation of the Constitution or laws of the United States, or that the court was without</li> <li>jurisdiction to impose such sentence, or that the sentence was in excess of the maximum</li> <li>authorized by law, or is otherwise subject to collateral attack"</li> </ul>	18 19	28 U.S.C. § 2255 to Vacate, Set Aside, or Correc Custody. Dkt. # 1. For the reasons that follow, the set of the test of test o	t a Sentence by a Person in Federal
<ul> <li>jurisdiction to impose such sentence, or that the sentence was in excess of the maximum</li> <li>authorized by law, or is otherwise subject to collateral attack"</li> </ul>	18 19 20	28 U.S.C. § 2255 to Vacate, Set Aside, or Correc Custody. Dkt. # 1. For the reasons that follow, the motion.	t a Sentence by a Person in Federal he Court <b>DENIES</b> Mr. Bresnahan's
<ul> <li>authorized by law, or is otherwise subject to collateral attack"</li> </ul>	18 19 20 21	<ul> <li>28 U.S.C. § 2255 to Vacate, Set Aside, or Correc</li> <li>Custody. Dkt. # 1. For the reasons that follow, the motion.</li> <li>Under 28 U.S.C. § 2255(a), a federal priso</li> </ul>	t a Sentence by a Person in Federal he Court <b>DENIES</b> Mr. Bresnahan's oner may file a motion to vacate, set
26	18 19 20 21 22	<ul> <li>28 U.S.C. § 2255 to Vacate, Set Aside, or Correc Custody. Dkt. # 1. For the reasons that follow, the motion.</li> <li>Under 28 U.S.C. § 2255(a), a federal prisonaside, or correct his or her sentence "upon the groups."</li> </ul>	t a Sentence by a Person in Federal he Court <b>DENIES</b> Mr. Bresnahan's oner may file a motion to vacate, set ound that the sentence was imposed in
	<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	<ul> <li>28 U.S.C. § 2255 to Vacate, Set Aside, or Correc Custody. Dkt. # 1. For the reasons that follow, the motion.</li> <li>Under 28 U.S.C. § 2255(a), a federal prisonaside, or correct his or her sentence "upon the growiolation of the Constitution or laws of the United Statement of the Constitution or laws of the United Statement of the Constitution or laws of the United Statement of the Constitution or laws of the United Statement of the Constitution of the</li></ul>	t a Sentence by a Person in Federal he Court <b>DENIES</b> Mr. Bresnahan's oner may file a motion to vacate, set ound that the sentence was imposed in d States, or that the court was without
27	<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	28 U.S.C. § 2255 to Vacate, Set Aside, or Correc Custody. Dkt. # 1. For the reasons that follow, th motion. Under 28 U.S.C. § 2255(a), a federal priso aside, or correct his or her sentence "upon the gro violation of the Constitution or laws of the United jurisdiction to impose such sentence, or that the s	t a Sentence by a Person in Federal he Court <b>DENIES</b> Mr. Bresnahan's oner may file a motion to vacate, set ound that the sentence was imposed in d States, or that the court was without entence was in excess of the maximum
	<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ol>	28 U.S.C. § 2255 to Vacate, Set Aside, or Correc Custody. Dkt. # 1. For the reasons that follow, th motion. Under 28 U.S.C. § 2255(a), a federal priso aside, or correct his or her sentence "upon the gro violation of the Constitution or laws of the United jurisdiction to impose such sentence, or that the s	t a Sentence by a Person in Federal he Court <b>DENIES</b> Mr. Bresnahan's oner may file a motion to vacate, set ound that the sentence was imposed in d States, or that the court was without entence was in excess of the maximum

Under 28 U.S.C. § 2253(c), there is no right to appeal from a final order in a
 proceeding under section 2255 unless a circuit judge issues a certificate of appealability.
 28 U.S.C. § 2253(c)(1)(B).

4 Mr. Bresnahan's motion is based upon Johnson v. United States, 135 S.Ct. 2551 5 (2015); Mr. Bresnahan argues that the sentencing enhancement he received is subject to 6 review based on Supreme Court precedent. See, generally, Dkt. # 1. To qualify for a 7 sentence reduction under *Johnson*, Mr. Bresnahan must show that he was sentenced 8 under the residual clause of the Armed Career Criminal Act (ACCA). See Johnson, 135 9 S.Ct. 2551; see also Beckles v. United States, No. 15-8544, 2017 WL 855781 (U.S. Mar. 10 6, 2017) (finding that *Johnson* does not extend to those sentenced under a similarly 11 worded clause in the Sentencing Guidelines).

According to Mr. Bresnahan's Pre-Sentence Report, he was charged under 21
U.S.C. §§ 841(a)(1) and (b)(1)(C) as well as 18 U.S.C. § 924(c). CR13-179, Dkt. # 67.
However, Mr. Bresnahan's firearm charge under 18 U.S.C. § 924(c) was based on a drug
trafficking crime, not a "crime of violence." *Id.*; 18 U.S.C. § 924(c). The ACCA's
residual clause is based on the language of the latter, and therefore Mr. Bresnahan's *Johnson* claim has no application in this context.

Mr. Bresnahan's Pre-Sentence Report recommended that the Court sentence Mr.
Bresnahan as a career criminal pursuant to the Sentencing Guidelines. Dkt. # 67 at ¶ 34.
However, the Supreme Court recently decided that *Johnson* shall not apply to the
Sentencing Guidelines, and therefore Mr. Bresnahan is unable to challenge his criminal
history computations based on vagueness. *See Beckles*, 2017 WL 855781.

23

//

- 24 //
- 25 //
- 26 //
- 27 //

1	For the all the foregoing reasons, the motion is <b>DENIED</b> . Dkt. # 1, 8. The motion
2	to seal is <b>GRANTED</b> . Dkt. # 7. The Court directs the Clerk to <b>DISMISS</b> this action.
3	The Court finds that reasonable jurists would not debate the resolution of this motion.
4	Accordingly, the Court declines to issue a certificate of appealability. See Fed. R.
5	Governing § 2255 Proceedings, Rule 11(a); <i>Slack v. McDaniel</i> , 529 U.S. 473, 484 (2000).
6	
7	Dated this 22nd day of March, 2017.
8	
9	Richard A Jone
10	$\mathbf{V}$
11	The Honorable Richard A. Jones United States District Judge
12	
13	
14	
15	
16	
17	
18 19	
20	
20	
22	
23	
24	
25	
26	
27	