

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-13089

D.C. Docket No. 00377-CR-JIC

In re: GILBERTO RIVERO,

Petitioner.

Appeal from the United States District Court
for the Southern District of Florida

Before ED CARNES, Chief Judge, TJOFLAT, HULL, MARCUS, WILSON,
WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, JULIE CARNES, and
JILL PRYOR, Circuit Judges.

BY THE COURT:

A member of this Court in active service requested a poll on whether this
Court should, under 28 U.S.C. § 1254(2), certify to the United States Supreme
Court the following question:

“Does the rule announced in Johnson v. United States, 135 S. Ct. 2551 (2015), apply retroactively to cases on collateral review that challenge a sentence based on the residual clause of the United States Sentencing Guidelines § 4B1.2(a)(2)?”

The poll having been conducted and a majority of the judges of this Court in active service having voted against certifying the question,

It is ORDERED that the question will not be certified to the Supreme Court.