

No. 17-6368

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IN THE  
**Supreme Court of the United States**

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**LEON ESCOURSE WESTBROOK,**  
*Petitioner,*

v.

**UNITED STATES OF AMERICA,**  
*Respondent.*

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**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit**

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**SECOND SUPPLEMENTAL BRIEF**

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## SECOND SUPPLEMENTAL BRIEF

Petitioner Leon Escourse Westbrook, pursuant to Supreme Court Rule 15.8, brings to this Court's attention the following decisions issued after this Court's recent decision in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018):

In *United States v. Salas*, the Tenth Circuit held that *Dimaya* compelled the conclusion that 18 U.S.C. § 924(c)'s residual clause is unconstitutionally vague. --- F.3d ---, 2018 WL 2074547, at \*4 (10th Cir. May 4, 2018) ("*Dimaya*'s reasoning for invalidating § 16(b) applies equally to § 924(c)(3)(B).").

In *United States v. Wiles*, on the other hand, the Eleventh Circuit further entrenched itself in its view that *Dimaya* does not affect § 924(c). --- F. App'x ---, 2018 WL 2017905, at \*1 (11th Cir. Apr. 30, 2018) ("Wiles's contention that the risk-of-force clause in § 924(c)(3)(B) is unconstitutionally vague is foreclosed by *Ovalles*, notwithstanding *Dimaya*."); see also *Myrthil v. United States*, --- F. App'x ---, 2018 WL 2068558, at \*2–3 (11th Cir. May 3, 2018) (holding post-*Dimaya* that *Ovalles* remains binding precedent on whether *Johnson* applies to § 924(c)'s residual clause).

With *Salas*, the Tenth Circuit has now joined the Seventh Circuit in holding that § 924(c)'s residual clause is unconstitutionally vague, deepening a circuit split on the issue. What's more, the Eleventh Circuit continues to rely on *Ovalles* even though *Dimaya* rejected almost all of its reasoning. See *Salas*, 2018 WL 2074547, at \*4 ("There is ostensibly a circuit split on the issue of § 924(c)(3)(B)'s constitutionality . . . . [b]ut *Dimaya* has since abrogated the reasoning of those cases."). Thus, even

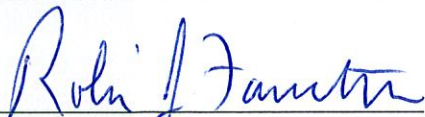
after *Dimaya*, the circuits are, and will remain, split. This Court's intervention is needed.

Mr. Escourse, therefore, respectfully requests that this Court grant his petition and schedule briefing and oral argument.

Respectfully submitted,

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