No. 17-7793

IN THE SUPREME COURT OF THE UNITED STATES

JESUS RAMIREZ-HIDALGO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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PETITIONER'S REPLY TO THE BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

In Johnson v. United States, 135 S. Ct. 2551 (2015), this Court held that the residual clause of the Armed Career Criminal Act's "violent felony" definition, 18 U.S.C. § 924(e)(2)(B)(ii), was unconstitutionally vague in violation of the Due Process Clause of the Fifth Amendment. The categorical inquiry required under the residual clause both denied fair notice to defendants and invited arbitrary enforcement by judges, because it "tie[d] the judicial assessment of risk to a judicially imagined 'ordinary case' of a crime, not to real-world facts or statutory elements." Johnson, 135 S. Ct. at 2557. The "crime of violence" definition in 18 U.S.C. § 16(b), as incorporated into the statutory enhancement provision of 8 U.S.C. § 1326(b)(2), likewise requires a categorical assessment of the degree of risk presented in the "ordinary case" of a crime.

The question presented is whether 18 U.S.C. § 16(b) violates the Constitution's prohibition of vague criminal laws by requiring application of an indeterminate risk standard to the "ordinary case" of an individual's prior conviction.

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MISCELLANEOUS

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This petition for a writ of certiorari is not moot. The Court should treat this petition as it has treated other petitions raising the exact same issue by granting the writ, vacating the judgment, and remanding to the Fifth Circuit for further consideration in light of Sessions v. Dimaya, 138 S. Ct. 1204 (2018).

Mr. Ramirez-Hidalgo was convicted and had judgment entered against him pursuant to 8 U.S.C. § 1326(b)(2). That statutory provision raises the maximum term of imprisonment to 20 years for illegal-reentry defendants found in the United States after having been deported following a conviction for an "aggravated felony." That statutory provision incorporates the definition of "aggravated felony" from 8 U.S.C. § 1101(a)(43), which, in turn, incorporates the "crime of violence" definition of 18 U.S.C. § 16.[1] See 8 U.S.C. § 1101(a)(43)(F).

In the Fifth Circuit, Mr. Ramirez-Hidalgo challenged the classification of his prior conviction as one for an "aggravated felony," arguing that § 16(b)—the statutory basis for the classification—is unconstitutionally vague in light of Johnson v. United States, 135 S. Ct. 2551 (2015). The Fifth Circuit affirmed his conviction and sentence, concluding that

[1] Section 16 of Title 18 defines "crime of violence" as:

(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 16.

his constitutional argument was foreclosed by the court's decision in United States v. Gonzalez-Longoria, 831 F.3d 670, 674-80 (5th Cir. 2016) (en banc), cert. denied, No. 16-6259 (U.S. May 14, 2018), petition for rehearing filed, No. 16-6259 (U.S. May 21, 2018). Mr. Ramirez-Hidalgo filed a petition for a writ of certiorari, highlighting the split among the circuits on this issue.

On April 17, 2018, the Court issued its opinion in Dimaya, resolving the circuit split with respect to the constitutionality of § 16(b) against the Fifth Circuit. Dimaya, 138 S. Ct. at 1210. The Court in Dimaya agreed with the Ninth Circuit—and Mr. Ramirez-Hidalgo—that § 16(b) is unconstitutionally vague under Johnson. Dimaya, 138 S. Ct. at 1210.

Despite the Court's abrogation of the Fifth Circuit's decision that was relied on to affirm Mr. Ramirez-Hidalgo's conviction, the government contends that the petition should be denied as moot because petitioner has served his prison sentence and been deported. U.S. Br. Opp. 6-9. The government's argument should be rejected. Although the government is correct that the "aggravated felony" classification did not affect petitioner's sentence, U.S. Br. Opp. 9-10, the petition is not moot.

The written judgment entered by the district court in petitioner's case reflects conviction and sentencing under § 1326(b)(2), signifying the "aggravated felony" determination. As explained in the petition, Pet. 21-22, this Court has recognized that there is a "heightened stigma associated with an offense the legislature had selected as worthy of greater punishment." Apprendi v. New Jersey, 530 U.S. 466, 495 (2000).

Moreover, the § 1326(b)(2) determination would trigger the permanent inadmissibility bar of 8 U.S.C. § 1182(a)(9)(A). See Gonzalez-Longoria, 831 F.3d at 674

n.2. Indeed, the Fifth Circuit has held specifically that the inclusion of § 1326(b)(2) as the statute of conviction in the judgment renders an appeal ***not moot*** because of collateral consequences, even when the defendant has served his sentence and been deported. See id.; United States v. Agrueta-Vasquez, 697 Fed. Appx. 419, 419 (5th Cir. 2017) (unpublished). And that court has ***repeatedly*** remanded cases for the purpose of correcting the judgment to reflect conviction and sentencing under 8 U.S.C. § 1326(b)(1) due to the collateral consequences of the § 1326(b)(2) designation. See, e.g., United States v. Ovalle-Garcia, 868 F.3d 313, 314 (5th Cir. 2017) (finding that erroneously entering judgment under § 1326(b)(2) "is neither harmless nor moot because the erroneous judgment could have collateral consequences"); United States v. Briceno, 681 Fed. Appx. 334, 338 (5th Cir. 2017) (unpublished); United States v. Oliveros Mejia, 589 Fed. Appx. 296, 297 (5th Cir. 2015) (unpublished); United States v. Jimenez-Laines, 342 Fed. Appx. 978, 979 (5th Cir. 2009) (unpublished); United States v. Gutierrez-Garrido, 75 Fed. Appx. 231, 231-32 (5th Cir. 2003) (unpublished). Because Mr. Ramirez-Hidalgo is clearly entitled to relief in the form of a corrected judgement under Dimaya and Fifth Circuit precedent, the petition should be granted.

In addition, this Court granted other petitions for a writ of certiorari raising the exact same issue regarding the statutory classification of the illegal-reentry offense under § 1326(b)(2). See Ramon Hernandez-Ramirez, aka Ramon Hernandez v. United States, No. 17-6065 (granting the petition, vacating the judgment, and remanding for further consideration in light of Dimaya for petitioners Ramon Hernandez-Ramirez and Jose Ramos); Adalberto Aguirre-Arellano v. United States, No. 16-8675 (same for petitioners

Adalberto Aguirre-Arellano, Maximo Anastacio-Morales, Luis Alberto Esparza-Casillas, Luis Martin Mendoza-Aceves, Daniel Rivera-Hernandez, Albin Alexander Torres, Jose Luis Valle-Ramirez, and Jose Emilio Vanegas-Martinez); Francisco Alvaro-Velasco v. United States, No. 16-8058 (same for petitioners Francisco Alvaro-Velasco, Arturo Montes Benavides, Juan Castro-Castro, Jose Prudencio Canales-Bonilla, Edwin Garrido, Daniel Gonzalez-Bautista, Jose Lara-Garcia, Juan Morales-Leon, Jesus Morales-Sanchez, Carlos Alberto Perez De Leon, Elder Rocael Tzacir-Garcia, Helber Valdez, and Esteban Casabon-Ramirez). At least seven of these petitioners, like Mr. Ramirez-Hidalgo, had already completed their prison sentences and been released from the custody of the Federal Bureau of Prisons ("BOP"). See BOP Inmate Locator, https://bop.gov/inmateloc (reflecting that petitioner Aguirre-Arellano was released on February 6, 2018, petitioner Canales-Bonilla was released on September 14, 2017, petitioner Casabon-Ramirez was released on January 24, 2018, petitioner Morales-Sanchez was released on December 7, 2017, petitioner Tzacir-Garcia was released on June 27, 2017, petitioner Valdez was released on April 19, 2017, and petitioner Valle-Ramirez was released on August 22, 2017).

Mr. Ramirez-Hidalgo simply requests that the Court treat his petition the same way it has treated other petitions raising the identical issue. As this Court has said, "the basic principle of justice that like cases should be decided alike." Martin v. Franklin Capital Corp., 546 U.S. 132, 139 (2005). The Court should grant the petition.

CONCLUSION

For the foregoing reasons, as well as those set forth in the original petition for writ of certiorari, the petition for writ of certiorari should be granted.

Date: May 25, 2018

Respectfully submitted,

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