

No. 18-5306

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IN THE SUPREME COURT OF THE UNITED STATES

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RAMIAH JEFFERSON, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 15-20) that his conviction for possession of a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A), should be vacated because the relevant definition of a "crime of violence" in 18 U.S.C. 924(c) is unconstitutionally vague. Section 924(c)(3) defines a "crime of violence" as a felony that either "has as an element the use, attempted use, or threatened use of physical force against the person or property of another," 18 U.S.C. 924(c)(3)(A), or, "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. 924(c)(3)(B). The "crime of violence" underlying petitioner's Section 924(c) offense was conspiracy to engage in a pattern of racketeering activity, in violation of 18 U.S.C. 1962(d). See Third Superseding Indictment 31-32. Petitioner contends that racketeering conspiracy could qualify as a "crime of violence" only under Section 924(c)(3)(B), which he asserts is void for vagueness.

In Sessions v. Dimaya, 138 S. Ct. 1204 (2018), this Court held that the definition of a "crime of violence" in 18 U.S.C. 16(b), which contains language that is nearly identical to that in Section 924(c)(3)(B), is unconstitutionally vague. 138 S. Ct. at 1223. Three courts of appeals have since held that Section 924(c)(3)(B) is unconstitutionally vague in light of Dimaya. See United States v. Davis, 903 F.3d 483, 485-486 (5th Cir. 2018) (per curiam), petition for cert. pending, No. 18-431 (filed Oct. 3, 2018); United States v. Eshetu, 898 F.3d 36, 37-38 (D.C. Cir.) (per curiam), petition for reh'g en banc pending, No. 15-3020 (D.C. Cir. filed Aug. 31, 2018); United States v. Salas, 889 F.3d 681, 684-686 (10th Cir.), petition for cert. pending, No. 18-428 (filed Oct. 3, 2018). Three other courts of appeals have expressly disagreed with other circuits and have determined that Section 924(c)(3)(B) is not unconstitutionally vague. See United States v. Douglas, No. 18-1129, 2018 WL 4941132, at \*5-\*12 (1st Cir. Oct. 12, 2018); Ovalles v. United States, No. 17-10172, 2018 WL 4830079,

at \*1-\*2 (11th Cir. Oct. 4, 2018) (en banc); United States v. Barrett, 903 F.3d 166, 178-184 (2d Cir. 2018).

The United States has filed petitions for writs of certiorari in United States v. Davis, supra, and United States v. Salas, supra, seeking review of their invalidation of Section 924(c)(3)(B). Davis and, to a lesser extent, Salas provide superior vehicles than this case for addressing the constitutionality of that provision. In both Davis and Salas, the courts of appeals considered the question in published opinions issued after this Court's decision in Dimaya. See Davis, 903 F.3d at 485-486; Salas, 889 F.3d at 684-686. By contrast, in this case, the court of appeals addressed the constitutionality of Section 924(c)(3)(B) on plain-error review in an opinion that predated Dimaya and was not selected for publication. See Pet. App. 21-22. The Court accordingly should hold the petition in this case pending the disposition of the petitions in Davis and Salas, and then dispose of the petition in this case as appropriate.\*

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General

OCTOBER 2018

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\* The government waives any further response to the petition unless this Court requests otherwise.