

IN THE
UNITED STATES SUPREME COURT

No. 18-5808

RAFAEL RONDON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

RAFAEL RONDON #48834-018
FEDERAL CORRECTIONAL INSTITUTION
PO. BOX. 1032
COLEMAN, FLORIDA 33521 - 1032

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Petitioner herein certifies that this rehearing is presented in good faith and not for delay, and that the grounds are limited to circumstances of a substantial or controlling effect; all pursuant to 28 U.S.C. § 1746, under penalty of perjury.

10/23/2018

A handwritten signature in black ink, appearing to be 'Rafael Rondon', written over a horizontal line.

RAFAEL RONDON #48834-108

PETITION FOR REHEARING

Petitioner, respectfully requests that the Court issue a rehearing pending the Supreme Court's resolution of whether 18 U.S.C. §924(c)(3)(B) is unconstitutional.

In Sessions v. Dimaya, 138 S.Ct. 1204 (2018), the Supreme Court held that 18 U.S.C. § 16(b), an identical statute, was unconstitutionally vague in light of Johnson v. United States, 135 S. Ct. 2551 (2015). Nonetheless, the en banc Eleventh Circuit, joining the Second Circuit, United States v. Barrett, 903 F.3d 151 (2d Cir. 2018), recently held that § 924(C)(3)(B) is not unconstitutionally vague, Ovalles v. United States, __F.3d__, 2018 WL 4830079 (11th Cir. Oct. 4, 2018)(en banc).

By contrast, the Fifth, Tenth, and D.C. Circuits have held that § 924(c)(3)(B) is unconstitutionally vague in light of Dimaya. see United States v. Davis, __F.3d__, 2018 WL 4268432 (5th Cir.), petition for cert. pending (U.S. No. 18-413)(filed Oct. 3, 2018) United States v. Salas, 889 F.3d 681, 684-86 (10th Cir.), petition for cert. pending (U.S. 18-428)(filed Oct. 3, 2018); United States v. Eshetu, 898 F.3d 36, 37-38 (C.D. Cir.), petition for reh'g pending, No. 15-3020 (D.C. Cir. Filed Aug. 31, 2018).

The day before the en banc Eleventh Circuit issued its decision in Ovalles, the Solicitor General filed petitions for a writ of certiorari in the Supreme Court, seeking review of that issue. United States v. Davis & Glover (U.S. No. 18-413)(cert. filed Oct. 3, 2018); United States v. Salas (U.S. No. 18-428)

(cert. filed Oct. 3, 2018). the government urged the Supreme Court to grant review because this "issue has generated circuit disagreement, caused widespread confusion in the lower courts, and impeded the enforcement of a federal statute that is critically important to controlling violent crime." Davis, Cert. Pet. 21.

Therefore, Supreme Court review of this issue is likely imminent. The circuits are openly divided on this important question of criminal justice, and the government itself has urged that this "widespread post-Dimaya disruption warrants th[e] [Supreme] Court's immediate attention." *Id.* at 23. The Supreme Court frequently grants certiorari petitions filed by the government, even where there is no circuit conflict.¹ Given the clear circuit conflict here, and the government's request for immediate review, the Court will very likely resolve the issue this Term.


Accordingly, the most prudent course of action would be to issue a rehearing in this case. Resolving this case, and others like it, while Supreme Court review is imminent, would be an inefficient expenditure of this Court's resources. It would engender an additional round of litigation by the parties in the Supreme Court, which would simply "hold" those cases pending its resolution of the issue. And, if the Supreme Court ultimately abrogates Ovalles, then those cases would all be returned to this Court.

¹ See, e.g., Adam Feldman & Alexander Kappner, Finding Certainty in Cert; An Empirical Analysis of the Factors Involved in Supreme Court Certiorari Decisions from 2001-15, 61 Vill. L. Rev. 795, 828 (2017) ("The SG's success rates, as predicted, far exceed even the top performing attorneys in private practice. Each SG studied had a rate of cert grants greater than 65%").

CONCLUSION

Granting rehearing in this case, pending the .. resolution of the issues in the Supreme Court would minimize those inefficiencies. Petitioner herein - moves this Honorable Court to grant rehearing in the above captioned case in the interest of justice.

10/23/2018



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CERTIFICATE OF SERVICE

I certify under penalty of perjury that I mailed a copy of the rehearing to the United States Solicitor General at 950 PENNSYLVANIA AVE, WASHINGTON D.C. 20530, under 28 U.S.C. § 1746.



RAFAEL RONDON #48834-018