

MAR 22 2019

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NO. 18-8642

IN THE
SUPREME COURT OF THE UNITED STATES

DEJUAN LESHAE HILL

Petitioner

vs

UNITED STATES OF AMERICA,

Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals for
the Tenth Circuit in Cause No. 17-5106

PETITION FOR WRIT OF CERTIORARI
FOR DEJUAN LESHAE HILL

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ORIGINAL

QUESTIONS PRESENTED

I. Whether The Tenth Circuit Erred In Failing To Address In Its Order Denying A Certificate Of Appealability, The Unconstitutionality Of Use And Carry Of A Firearm Under 18 U.S.C. § 924(c) Offenses, In Relation To The Convictions For Violating 18 U.S.C. § 1951, During 28 U.S.C. § 2255 Proceedings.

LIST OF PARTIES

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Defendant/Appellant

United States Of America
Plaintiff/Appellee

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The Honorable James H. Payne
United States District Court Judge

United States Court Of Appeals
for the Tenth Circuit
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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI
FOR DEJUAN LESHAE HILL

Dejuan Leshae Hill respectfully prays for this Court's consideration in issuing a writ of certiorari to review the judgment below.

OPINIONS BELOW

The decision of the United States District Court for the Northern District of Oklahoma, United States v. Hill, No. 16-CV-00310 (ND.OK July 27, 2017), appear at Appendix A.

The decision of the United States Court of Appeals for the Tenth Circuit is published, United States v. Hill, 2018 U.S. App. LEXIS 25012 (10th Cir. Sept. 4, 2018), appears at Appendix B.

STATEMENT OF JURISDICTION

On September 4, 2018, the Tenth Circuit denied Hill a certificate of appealability. Subsequently, Hill's Petition for Rehearing and/or Rehearing En Banc was denied on December 27, 2018. The jurisdiction of this Court is properly invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2253

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from--

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255 [28 U.S.C. § 2255].

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

)

STATEMENT OF THE CASE

Dejuan Leshae Hill (hereinafter "Hill"), was named in an ten-count Superseding Indictment in the United States District Court for the Northern District of Oklahoma, on July 11, 2012, charging Hill¹ and seven others with Conspiracy to Obstruct, Delay and Affect Commerce by Robbery, in violation of 18 U.S.C. § 1951 (Count One). The superseding indictment provided details regarding the manner and means of the conspiracy including that the "conspirators were and are members or affiliates with Hoover Crips gang;"² the "conspirators would and did commit robberies of businesses, including pharmacies, banks and a credit union;" the "conspirators would and did use firearms during the robberies;" the "conspirators would and did use cellular phones to communicate before, during and after robberies;" and the "conspirators would and did threaten persons who were potential witnesses to robberies." (D.E. 96, at p. 2). In addition to the conspiracy charge, the superseding indictment charged Hill with the November 5, 2011, robbery of an Arvest Bank (Count Nine), in violation of 18 U.S.C. § 1951; and possession of a firearm in furtherance of the Arvest Bank Robbery and aiding and abetting in violation of 18 U.S.C. § 2 (Count Ten). On January 23, 2013, a jury trial was commenced and on February 15, 2013, the jury returned its verdicts finding Hill guilty on all three counts (D.E. 517). Additionally, the jury answered numerous interrogatories in relation to the crimes

¹ The superseding indictment charged Hill as "Dejuan Legmar Hill." On July 12, 2012, the court corrected Hill's name to Dejuan Leshae Hill.

² Hill has never been and never will be a part of a gang, however, one of the arresting officers chose to take one tattoo on Hill and alleged that it was a tattoo associated with the Crips. This incorrect allegation stuck in the record even until this day.

involved, specifically finding as it relates Hill, the following:

We, the jury, unanimously find beyond a reasonable doubt that the government proved the following overt acts:

* * * * *

20. On or about November 5, 2011, V. Hill, Dejuan Leshae Hill ("Defendant D. HILL") and a person known to the Grand Jury as "Robber A", Stanley Hill used cellular phones to communicate with each other prior to and after robbery of the Arvest Bank located at 218 South Memorial Street, Tulsa, Oklahoma.
22. On November 5, 2011, D. Hill entered into the Arvest Bank wearing a mask.
23. On November 5, 2011, V. Hill and D. Hill ordered customers and employees to get on the ground.
24. On November 5, 2011, D. Hill and V. Hill, demanded money from the bank employees.
25. On November 5, 2011, after robbing the bank, V. Hill and D. Hill, got into a get away car driven by Robber A filed the area of the bank and traveled to a residence located at 1107 East Pine, Tulsa, Oklahoma.
26. On April 4, 2012, Defendants caused shots to be fired into a house at 2148 North Norfolk Avenue, Tulsa, Oklahoma.

(D.E. 517-1).

On May 28, 2013, Hill was sentenced to 162 months consisting of 78 months on boths Counts One and Nine, said terms to run concurrently, and 84 months on Count Ten, to be served consecutively to Counts One and Nine. Additionally, upon release from custody, the court ordered Hill to be placed on supervised release for a period of three (3) years on Counts One and Nineand Five (5) years on Count Ten. Further, Hill was ordered to pay \$300 special monetary assessment, a \$1,000 fine, and restitution of \$311.52. At the end of sentencing, Hill was advised that he would have ten (10) days in which to appeal the judgment. The Judgment was filed of record on June 3, 2013.

Following his conviction, Hill filed a direct appeal. In his appeal, Hill raised four issues: 1) there was insufficient evidence to convict him of the robbery of Arvest Bank; 2) there was a substantially prejudicial variance between the single global conspiracy charged in the indictment and the evidence of the individual conspiracies produced at trial; 3) trial court erred in failing to grant his motion for misjoinder or to sever his trial from that of his co-defendants; and 4) trial court committed error when it denied his motion to exclude gang evidence based upon Red. R. Evid. 403.

STATEMENT OF THE FACT

The Tenth Circuit summarized the background facts as follows:

Hill was indicted, tried, and convicted of both robbing Arvest Bank in Tulsa, Oklahoma in November 2011 and taking part in a larger conspiracy to rob banks, a credit union, and four pharmacies in the Tulsa area from 2009 to 2011. Before and during trial, Dejuan filed motions related to the four issues that he raised on appeal: (1) a motion to dismiss Count One, arguing that a fatal variance existed because the Indictment against him charged a single global conspiracy but the evidence at trial instead proved multiple, smaller conspiracies; (2) a pretrial motion for misjoinder of defendants, contending that joining his charges to those of his co-defendants was improper and so prejudicial that a separate trial was required; (3) a motion in limine to exclude evidence of gang affiliation, arguing that the evidence was both irrelevant to his charges and unfairly prejudicial to him; and (4) a motion for judgment of acquittal at the close of the evidence, arguing that the government produced insufficient evidence to convict Dejuan of any of his three charges. The district court denied each of these motions.

Confronted with a series of robberies of banks and pharmacies in Tulsa, Oklahoma, Tulsa police—with the FBI's help—investigated. Law enforcement came to believe that the local Hoover Crips gang was connected to the robberies. The Tulsa Police Department has a multi-step process through which it certifies individuals as gang members and—based principally on his certification as a member of the Hoover Crips—police identified Dejuan as a person of interest in this string of robberies.

Based on their investigation, law enforcement eventually came to believe that several men associated with the Hoover Crips, including Dejuan, had conspired to commit a number of these robberies. A federal grand jury returned a ten-count indictment against this group of alleged co-conspirators, charging each with conspiring between August 2009 and November 2011 to commit six robberies in violation of this broad conspiracy and also charged him with the November 2011 robbery of Arvest Bank and-as part of that robbery-with using a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii).

The Arvest Bank robbery occurred on November 5, 2011. The government argued at trial that Dejuan and Vernon Hill robbed the bank and that Stanley Hill acted as the getaway driver. At around 8:30 a.m., two armed, masked men entered the bank. One carried a semiautomatic pistol and pointed it at customers while screaming profanities and ordering everyone onto the ground. Eyewitnesses said that the men were black males, based on the uncovered parts of their faces. Tellers complied with the robbers' demands to empty the cash drawers. Included in the cash that the tellers handed over to the robbers were marked bills and a GPS tracer. Police traced the GPS tracking device to Vernon Hill's home at 1107 E. Pine in Tulsa. Tulsa Police Department Officer Donnie Johnson received a call about the bank robbery soon after 8:30 a.m. Based on the movement of the GPS tracer-but before the police determined that the GPS tracking device had stopped at 1107 E. Pine-Johnson drove his patrol car to the area by 1107 E. Pine, and past him. As Dejuan passed by Johnson, the two man locked eyes for a few seconds.

Police detained Vernon and Stanley Hill as they separately attempted to leave 1107 E. Pine around two hours after the robbery. After obtaining a search warrant, police officers and FBI agents entered the house and seized (1) the stolen money, which was \$311.52 short of the \$86,918.52 taken but still included the marked bills and GPS tracer, (2) one set of robber's clothes (black sweatshirt, black pants, and black ski mask), and (3) a Glock .45 caliber pistol.

The government initially prosecuted Vernon and Stanley Hill for the Arvest Bank robbery without including Dejuan. Following a court proceeding related to the prosecution of Vernon and Stanley, Officer Johnson noticed Dejuan outside the court-room and recognized him as the person he had seen driving away in the black Nissan from the alley behind 1107 E. Pine. During a later court proceeding in that same prosecution, Officer Johnson identified Dejuan as the driver of the black Nissan. After Officer Johnson's in-court identification, Dejuan did not attend any further court proceedings in the case against Vernon and Stanley.

The government used the call phone records to support its position that Dejuan and Stanley Hill had used the two phones registered to Landrum. Landrum 2, which had phone number (918) 946-1576, was active on the morning of November 5. It was located in the vicinity of 1107 E. Pine around 7 a.m. and then was located near Landrum 2 showed no activity until November 6, suggesting that it may have been turned off. The other two phones-Landrum 1, which had phone number (918) 282-9204 were also located in the Vicinity of Whitney Landrum's address at around 7:15 a.m. on November 5 and were next used while close to Arvest Bank at 8:30 a.m. in the vicinity of the bank. Around this same time, an eyewitness saw two men, whose descriptions matched those of the robbers, standing outside the bank, one speaking on a phone. After this, Landrum 1 showed it in the vicinity of 1107 E. Pine. As the cell-phone tower records showed, Landrum 1 began moving South after this and exchanged at least three calls with Vernon's phone occurred at 9:04 a.m. which was around the same time that Officer Johnson and Dejuan made eye contact outside of 1107 E. Pine. The government also tried to tie Dejuan to the robbery with video from an Arvest security camera and eyewitnesses descriptions of the robbers. Based on both the video and eyewitnesses one having a light-brown complexion and the other a dark-brown complexion.

On May 22, 2015, the Tenth Circuit affirmed Hill's conviction specifically finding the evidence was sufficient to convict him of the robbery of Arvest Bank and, of conspiring to rob Arvest Bank.

United States v. Hill, 786 F.3d 1254 (10th Cir. 2015), cert. denied, 136 S. Ct. 177 (2015).

On May 27, 2016, Hill filed a Motion to Vacate pursuant to 28 U.S.C. § 2255. In his motion, Hill raises four grounds for relief. The grounds are as follows:

- I. Counsel Was In Fact Ineffective For Failure To Raise Violations Due-Process Under The Fifth Amendment, Because The Government Never Proved There Was An Agreement Between Alleged Conspirators As It Relates To Hill; Instead He, Against Hill's Wishes, Filed For A Variance To No Avail.
- II. Counsel Was In Fact Ineffective For Failure To Raise Violations Of Hill's Sixth Amendment Right To A Fundamentally Fair Trial Because Of Improper Prosecutorial Comments During Closing Arguments And The Use Of Photo Charts That Were Not Submitted As Evidence During The Trial.
- III. Counsel Was In Fact Ineffective For His Failure To Raise Violation Of The Administrative Procedure Act, Because The Evidence Was Insufficient To Convict Hill Of The Arvest Bank Robbery Or Using A Gun During That Robbery As Alleged In Counts Nine And Ten.

IV. Counsel Was Ineffective For His Failure: 1.) To Call An Expert Witness To Rebut The Government's Testimony On Gang Certification; 2.) To Object To The Government's Closing Arguments And Use Of Photo Charts, i.e. Demonstrative Aids; And 3.) To Raise An Insufficiency Of The Evidence Argument As Counts Nine And Ten.

Later, the government responded asserting that Hill's claims are procedurally barred. First, the government alleged that the Tenth Circuit looked at the evidence surrounding the robbery count. (D.E. 799 at 6). Lastly, the government alleged that in light of the Tenth Circuit's conclusion that sufficient evidence existed to establish both that Hill robbed Arbest Bank and conspired to do so, Hill cannot establish that he was prejudiced by the Tenth Circuit's failure to address his sufficiency of the evidence claim as it relates to firearm charged in Count Ten since each member of a conspiracy is legally responsible for the crimes of his fellow conspirators committed in furtherance of the conspiracy. (D.E. 799 at 7-8). As a result, the district court erroneously found Hill was procedurally barred from raising his sufficiency of the evidence claims in these proceeding.

In Hill's second claim for relief, the government erroneously alleged that Hill was procedurally barred from raising this issue as well.

Specifically, the government offered that "since both defense counsel and the prosecutor corrected the misstatement, within a very short time after it was made, by clarifying that the defendant was NOT seen coming out of the house at 1107 E. Pine before he drove out of the alley, this court finds petitioner has failed to establish counsel was ineffective for not objecting to the misstatement." Lastly, the government offered that "petitioner has not established that he was prejudiced by the misstatement given the fact that the misstatement was corrected and the jury was

repeatedly cautioned by the court that the lawyers' statements and arguments were not evidence." (R. 799 at 10). The district court erroneously found Hill was procedurally barred from this issue on the before-mentioned basis.

In Hill's third claim for relief, the government erroneously alleged that Hill was procedurally barred from raising that counsel rendered ineffective assistance of counsel by failing to object to the use of a demonstrative aid, a compilation of photo charts, utilized by the government during closing arguments. According to defense counsel, "the demonstrative aid, in addition to containing photographs of individuals involved in the robbery, displayed times regarding the start of the Arvest robbery and the time that the defendant, Dejuan Hill, purportedly left the residence at 1107 East Pine which conflicted with the evidence introduced at trial." (D.E. 799 at 11).

The district court erroneously concluded that, "Simple compilation of photographs which were introduced at trial into a single demonstrative aid for purposes of closing argument did not violate the defendant's right to a fundamentally fair trial under the Sixth Amendment or his right of fair notice under the due process clause of the Fifth Amendment." (D.E. 799 at 11). Additionally, the district court concluded that appellate counsel was not ineffective for failing to appeal the court's ruling and Hill was procedurally barred from raising this issue. (D.E. 799 at 11).

In Hill's fourth claim for relief, the government alleged that he failed to establish that he was prejudiced in counsel being ineffective for not calling a "professional witness" to rebut the testimony of Tulsa Police Officer Steven Sanders regarding how a person becomes a certified gang member. (D.E. 799 at 15).

On July 27, 2017, U.S. District Court Judge James H. Payne denied Hill's Motion to Vacate pursuant to 28 U.S.C. § 2255. Simultaneously, the district court declined to issue a certificate of appealability as well. (D.E. 799).

Later, Hill offered a petition to alter or amend the July 27, 2017 judgment based on the need to correct clear error and prevent manifest injustice under Fed. R. Civ. P. 59(e), which the district court filed on August 28, 2017. (D.E. 800). Within this petition Hill choose to expound on the need to correct clear error or prevent manifest injustice regarding the four claims raised in his 28 U.S.C. § 2255. This petition was denied September 11, 2017. (D.E. 807).

On October 16, 2017, the district court filed Hill's notice of appeal to the denial of 28 U.S.C. § 2255; the denial of a certificate of appealability; and the denial of his petition to alter or amend the judgment denying his 2255 (D.E. 809).

Later, Hill filed his Combined Opening Brief And Application For A Certificate Of Appealability in the Tenth Circuit raising four issues as follows:

- I. Whether Counsel Was In Fact Ineffective For Failure To Raise Violations Of Due-Process Under The Fifth Amendment, Because The Government Never Proved There Was An Agreement Between Alleged Conspirators As It Relates To Hill; Instead He, Against Hills Wishes, Filed For A Variance To Avail.
- II. Whether Counsel Was In Fact Ineffective For Failure To Raise Violations Of Hill's Sixth Amendment Right To A Fundamentally Fair Trial Because Of Improper Prosecutorial Comments During Closing Arguments And The Use Of Photo Charts That Were Not Submitted As Evidence During The Trial.
- III. Whether Counsel Was In Fact Ineffective For His Failure To Raise Violations Of The Administrative Procedure Act, Because The Evidence Was Insufficient To Convict Hill Of The Arrest Bank Robbery Or Using A Gun During That Robbery As Alleged In Counts Nine And Ten.

IV. Whether Counsel Was In Fact Ineffective For His Failure:
1.) To Call An Expert Witness To Rebut The Government's Testimony On Gang Certification; 2.) To Object To The Government's Closing Arguments And Use Of Photo Charts, i.e. Demonstrative Aids; And 3.) To Raise An Insufficiency Of The Evidence Argument As To Counts Nine And Ten.

Before the Tenth Circuit considered Hill's Combined Opening Brief And Application For A Certificate Of Appealability, he filed a Supplemental Brief based on the Supreme Court's holding April 17, 2018, that the residual clause in 18 U.S.C. § 16(b) is unconstitutionally vague. *Sessions v. Dimaya*, 138 S. Ct. 1204, 1215, 200 L. Ed. 2d 549 (2018). Hill offered the following:

I. Use And Carry Of A Firearm 18 U.S.C. § 924(c) Offenses In Relation To The Convictions For Violating 18 U.S.C. § 1951 (Counts 1 and 9): Count 10, Is Unconstitutionally Vague.

On September 4, 2018, the Tenth Circuit denied Hill a certificate of appealability on all grounds, however, his motion for leave to proceed in forma pauperis was granted.

Although the Tenth Circuit denied Hill a COA, his claim raised in his Supplemental Brief was never addressed, so Hill offered this same claim in a Petition For Rehearing And/Or Rehearing En Banc, which in turn was denied on December 27, 2018. The Tenth Circuit failed to address this claim once again.

REASONS FOR GRANTING WRIT

- I. Whether The Tenth Circuit Erred In Failing To Address In Its Order Denying A Certificate Of Appealability, The Unconstitutionality Of Use And Carry Of A Firearm Under 18 U.S.C. § 924(c) Offenses, In Relation To The Convictions For Violating 18 U.S.C. § 1951, During 28 U.S.C. § 2255 Proceedings.

Hill's § 924(c) conviction based on Conspiracy to commit Hobbs Act robbery under 18 U.S.C. § 1951 (Count 10) must be overturned because of Sessions v. Dimaya, 138 S. Ct. 1204, 1215, 200 L. Ed. 2d 549 (U.S. April 17, 2018) and subsequent cases applying Dimaya's holding.

Section 924(c)(3) defines "crime of violence" as an offense that is a felony and either "(A) has as an element the use, or threatened use of physical force against the person or property of another, or (B) 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. § 924(c)(3). The first clause is commonly referred to as the "elements clause" and the second the "residual clause." See, e.g., United States v. Lee, 458 Fed. App'x 741, 745 (10th Cir. 2012).

To decide whether a person's conviction falls within the scope of that clause, courts apply the categorial approach. This approach has courts ask not whether "the particular facts" underlying a conviction created a substantial risk, Lecocal v. Ashcroft, 543 U.S. 1, 7, nor whether the statutory elements of a crime require the creation of such a risk in each and every case, but whether "the ordinary case" of an offense poses the requisite risk, James v. United States, 550 U.S. 192, 208.

Interestingly, these predicate convictions must be overturned as a consequence of the voiding of the residual clause of § 924(c) and the fact that a Hobbs Act robbery can be accomplished without the use of physical force, as that term is understood in the case law. All six of the § 924(c) convictions hinge to a varying degree on whether "robbery" as defined in 18 U.S.C. § 1951(b)(1) has as an element "the use, or threatened use of physical force against the person or property of another." 18 U.S.C. 924(c)(3)(A).

A. The Unconstitutionality Of 18 U.S.C. § 924(c)(3)(A) & (B)

Last year, the Tenth Circuit held that federal kidnapping is not a crime of violence for purposes of § 924(c). In Hopper, the Tenth Circuit held that § 1201(a) "does not fit within the elements clause [of § 924(c)] because it can be committed by 'inveigling,' which does not involve force." 723 Fed. App'x at 646. And in Salas, the Tenth Circuit held that the residual clause of § 924(c) is "unconstitutionally vague." 889 F.3d at 686. Accordingly, because under Hopper § 1201(a) is not a crime of violence under § 924(c)'s elements clause and under Salas § 924(c)'s residual clause is unconstitutionally vague, in the Tenth Circuit federal kidnapping is not a crime of violence for purpose of § 924(c), and the same analogy must be applied to the conspiracy to commit hobbs act robbery under 18 U.S.C. § 1951.

B. Conspiracy To Commit Hobbs Act Robbery

The weight of post-Johnson authority has found that conspiracy to commit a Hobbs Act robbery is not a crime of violence under section 924(c)'s force clause. See, e.g., *United States v. Pullia*, No. 16 C 6450, 2017 U.S. Dist. LEXIS 184994, 2017 WL 5171218, at *4 (N.D. Ill. Sept. 19, 2017) (Lefkow, J.) ("Because neither of the elements of Hobbs Act conspiracy requires that conspirator to use, attempt, or threaten the use of physical force, Hobbs Act conspiracy does not categorically qualify as a crime of violence under § 924(c)'s force clause."); *United States v. Hernandez*, 228 F. Supp. 3d 128, 138-39 (D. Me. 2017) ("I conclude that conspiracy to commit Hobbs act robbery is categorically not a crime of violence under the force clause of § 924(c)(3)(A)."); *Deering v. United States*, No. 15 C 8320, 2016 U.S. Dist. LEXIS 170351, 2016 WL 7178461, at *3 (N.D. Ill. Dec. 8, 2016) (Lefkow, J.); *United States v. Baires-Reyes*, 191 F. Supp. 3d 1046, 1050-51 (N.D. Cal. June 7, 2016) ("[T]he force clause explicitly encompasses attempted use of physical force; by contrast, conspiracy is not specifically covered by Section 924(c)'s force clause") (emphasis in original); *United States v. Smith*, 215 F. Supp. 3d 1026, 1034 (D. Nev. 2016) ("Agreeing to commit a robbery does not necessarily involve the use attempted use, attempted use, or threatened use of physical force"); *United States v. Luong*, No. 2:99 CR 433, 2016 U.S. Dist. LEXIS 53151, 2016 WL 1588495, at *2 (E.D. Cal. Apr. 20, 2016) (holding that conspiracy to commit Hobbs Act robbery did not satisfy the force clause because a jury would "not [be] required to find that [defendant] used, attempted to use, or threatened to use physical force in order to find him guilty of conspiracy"); *United States v. Edmundson*, 153 F. Supp. 3d 857, 859

(D. Md. 2015) (finding it "undisputed that Hobbs Act Conspiracy can be committed even without the use, attempted use, or threatened use of physical force against the person or property of another"). The decision-maker(s) must likewise find that Hobbs Act conspiracy does not constitute a crime of violence under the force/elements clause of section 924(c) because the elements of the offense do not require the conspirator to use, attempt, or threaten the use of physical force. Accordingly, Hill's 84-month sentence on Count Ten for possessing a firearm in furtherance of a crime of violence cannot constitutionally be grounded in his conviction for conspiracy to commit Hobbs Act robbery.

C. Dimaya

On April 17, 2018, the United States Supreme Court held that 18 U.S.C. § 16(b) - the "residual clause" of section 16's crime-of-violence definition-is unconstitutionally vague. *Seccion v. Dimaya*, 138 S. Ct. 1204, 1210, 200 L. Ed. 2d 549 (2018).

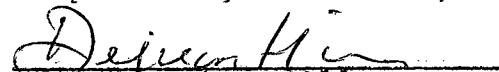
Under the residual clause that Dimaya struck down, "[t]he term 'crime of violence' means" an "offense that is a felony and that, by its nature, involves a substantial risk that physical [*2] force against the person or property of another may be used in the course of committing the offense." 18 U.S.C. § 924(c)(3)(B). To borrow a phrase, the two statutes are "materially identical." Gov't's Br. 12, *Session v. Dimaya*, S. Ct. No. 15-1498 (Nov. 14, 2016); see *Dimaya*, 138 S. Ct. at 1241 (Roberts, C.J., dissenting) ("§ 16 is replicated in . . . § 924(c)"). The decision-maker(s) must therefore discern no basis for a different result here from the one in Dimaya. Accord *United States v. Salas*, 889 F.3d 681, 684-86 (10th Cir. 2018) (invalidating section 924(c)(3)(B))

and explaining why its textual similarity with section 16(b) is dispositive). In short, section 924(c)(3)(B) is void for vagueness. Dimaya require this court to abjure any earlier analysis to the contrary. See United States v. Eshetu, 2018 U.S. App. Lexis 21526 (D.C. Cir. Aug. 3, 2018).

CONCLUSION

The petition for writ of certiorari is congruent with pending matters already before this court in other cases, which warrant consideration in Granting, Vacating and Remanding (GVR) this cause.

Respectfully submitted,

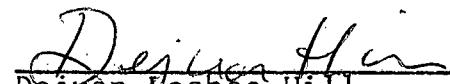

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I declare under the penalty of perjury that the foregoing is true and correct.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by First-Class U.S. mail, postage prepaid, on the 22nd day of March 2019, to the following:

Mr. Noel J. Francisco
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001


Dejuan Leshae Hill