

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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JOSEPH EMANUEL HECHAVARRIA, AKA DAVID RILEY,

*Petitioner,*

v.

WILLIAM P. BARR, UNITED STATES ATTORNEY GENERAL,

*Respondent.*

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

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**MOTION FOR LEAVE TO PROCEED  
*IN FORMA PAUPERIS***

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Timothy W. Hoover  
*Counsel of Record*  
Hodgson Russ LLP  
The Guaranty Building  
140 Pearl Street  
Buffalo, New York 14202  
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(716) 848-1271

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Pursuant to Supreme Court Rule 39, Petitioner moves for leave to file the attached petition for a writ of *certiorari* to the United States Court of Appeals for the Second Circuit without prepayment of fees or costs, and to proceed *in forma pauperis*.

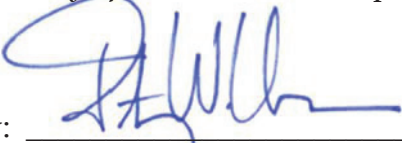
Attached to this motion are the orders granting Petitioner's motion to proceed *in forma pauperis* in the court below, and appointing the undersigned counsel from the court's *pro bono* panel.

Dated: May 28, 2020  
Buffalo, New York

Respectfully submitted,

**HODGSON RUSS LLP**

*Attorneys for Petitioner Joseph Hechavarria*

By: \_\_\_\_\_

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BIA  
Reid, IJ  
A028 333 385

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15<sup>th</sup> day of December, two thousand sixteen.

Present:

Guido Calabresi,  
José A. Cabranes,  
Raymond J. Lohier, Jr.,  
*Circuit Judges.*

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Joseph Emanuel Hechavarria, AKA David Riley,

*Petitioner,*

v.

15-3331

Loretta E. Lynch, United States Attorney General,

*Respondent.*

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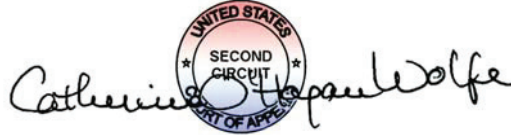
Petitioner, pro se, moves for leave to proceed in forma pauperis (“IFP”), appointment of counsel, and a stay of removal in connection with his petition for review of a decision of the Board of Immigration Appeals (“BIA”). Respondent opposes a stay. Upon due consideration, it is hereby ORDERED that the motions for IFP status and a stay of removal are GRANTED. Petitioner has an arguable claim that the BIA erred in adhering to the aggravated felony crime of violence determination under the law of the case doctrine without assessing whether *Johnson v. United States*, 135 S. Ct. 2551 (2015), constitutes intervening precedent.

It is further ORDERED that the motion for appointment of counsel is DENIED without prejudice to renewal after decisions are reached in the cases listed below. Whether *Johnson* invalidates the language of 18 U.S.C. § 16(b), which is incorporated into 8 U.S.C. § 1101(a)(43)(F)’s definition of a crime of violence aggravated felony, is before the Supreme Court in *Dimaya v. Lynch*, 803 F.3d 1110, 1120 (9th Cir. 2015), *cert. granted*, No. 15-1498, 2016 WL 3232911 (U.S. Sept. 29, 2016), and before this Court in *Ya Yi Zeng v. Holder*, 2d Cir. 15-709.

It is further ORDERED that these proceedings are stayed pending the Supreme Court's decision in *Dimaya*. Petitioner is instructed to file his Second Circuit Local Rule 31.2 scheduling notification within 30 days of the Supreme Court's decision in *Dimaya*, and Respondent is instructed to inform Petitioner when *Dimaya* has been decided.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

The block contains a handwritten signature in black ink that reads "Catherine O'Hagan Wolfe". Overlaid on the signature is the official seal of the United States Second Circuit Court of Appeals. The seal is circular with a red outer ring containing the text "UNITED STATES" at the top and "COURT OF APPEALS" at the bottom. Inside the ring, the words "SECOND CIRCUIT" are written in blue, flanked by two small blue stars.

BIA  
Reid, IJ  
A028 333 385

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 23<sup>rd</sup> day of August, two thousand eighteen.

Present:

Barrington D. Parker,  
Peter W. Hall,  
Raymond J. Lohier, Jr.,  
*Circuit Judges.*

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Joseph Emanuel Hechavarria, AKA David Riley,  
*Petitioner,*

v.

15-3331

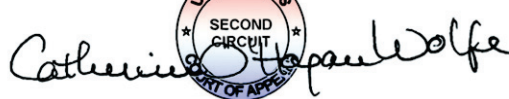
Jefferson B. Sessions III, United States Attorney General,  
*Respondent.*

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Petitioner, pro se, moves for appointment of counsel in connection with his petition for review of a decision of the Board of Immigration Appeals (“BIA”). Respondent moves to expedite consideration of this motion. Upon due consideration, it is hereby ORDERED that Petitioner’s motion is GRANTED. Counsel shall be appointed from the Court’s pro bono panel. It is further ORDERED that Respondent’s motion to expedite is DENIED as moot.

The parties are instructed to brief, among any other issues, whether (1) Petitioner’s conviction for assault in the second degree under New York Penal Law § 120.05(2) is a crime of violence as defined by 18 U.S.C. § 16(a); (2) the law of the case doctrine precluded the BIA from reaching the aggravated felony determination or (3) Petitioner’s initial failure to challenge that determination is excused in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015), and *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018).

FOR THE COURT:  
Catherine O’Hagan Wolfe, Clerk of Court

  
The signature of Catherine O'Hagan Wolfe is written in cursive over a circular official seal of the United States Court of Appeals for the Second Circuit.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30<sup>th</sup> day of August, two thousand eighteen.

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Joseph Emanuel Hechavarria, AKA David Riley,

*Petitioner,*

v.

15-3331

Jefferson B. Sessions III, United States Attorney General,

*Respondent.*

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IT IS HEREBY ORDERED that

Timothy Hoover  
Hodgson Russ LLP  
140 Pearl Street, Suite 100  
Buffalo, NY 14202  
(716) 848-1271

be appointed as counsel for the Petitioner. Counsel is directed to review Local Rule 31.2 regarding procedures for setting the filing dates for the submission of briefs.

**For the Court:**

Catherine O'Hagan Wolfe, Clerk of Court

A circular official seal of the United States Court of Appeals for the Second Circuit is positioned over the signature. The seal features the text "UNITED STATES", "SECOND CIRCUIT", and "CITY OF NEW YORK" around a central emblem.