

NO. 16-9660

IN THE SUPREME COURT OF THE UNITED STATES

JAIME ADRIAN HERNANDEZ-HERNANDEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Sup. Ct. R. 44.2, petitioner Jaime Adrian Hernandez-Hernandez (“petitioner” or “Mr. Hernandez”) respectfully petitions this Court for an order (1) granting rehearing, (2) vacating the Court’s May 14, 2018, order denying certiorari, and (3) re-disposing of his case by granting the petition for a writ of certiorari, vacating the judgment, and remanding to the Fifth Circuit for further consideration in light of Sessions v. Dimaya, 138 S. Ct. 1204 (2018).

Mr. Hernandez submits that, on the same day as the denial of his petition, this Court granted petitions for writ of certiorari raising the same issue as that raised in his case with respect to the propriety of an eight-level “aggravated felony” enhancement under the 2015 edition of the United States Sentencing Guidelines (“USSG”).

As grounds for this petition for rehearing, petitioner states the following:

Mr. Hernandez was sentenced for his illegal-reentry offense within a Guidelines range that included an eight-level “aggravated felony” enhancement, USSG § 2L1.2(b)(1)(C), based on his “crime of violence” of Texas felony evading arrest with a vehicle. The Guidelines definition of “aggravated felony” incorporates the definition of “aggravated felony” in 8 U.S.C. § 1101(a)(43), which, in turn, includes a “crime of violence” as defined in 18 U.S.C. § 16. Mr. Hernandez challenged the application of the “crime of violence”-type “aggravated felony” enhancement because § 16(b) was the only statutory provision that could form the basis for the “aggravated felony” classification, and § 16(b) is unconstitutionally vague in light of this Court’s holding in Johnson v. United

States, 135 S. Ct. 2251 (2015). The Fifth Circuit, relying on its opinion in United States v. Gonzalez-Longoria, 831 F.3d 670, 677-78 (5th Cir. 2016) (en banc), held that 18 U.S.C. § 16(b) was not unconstitutionally vague. Mr. Hernandez filed a petition for certiorari, challenging the “aggravated felony” enhancement and noting the split among the circuits on the application of Johnson to § 16(b).

On April 17, 2018, this 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. Although the Court agreed with the Ninth Circuit—and Mr. Hernandez—that § 16(b) is unconstitutionally vague under Johnson, the Court denied Mr. Hernandez’s petition for certiorari on May 14, 2018. In the same Order List for May 14, 2018, however, the Court granted the writ, vacated the judgment, and remanded for further consideration in light of Dimaya in other cases arising out of the Fifth Circuit where that court applied its Gonzalez-Longoria decision and the petitioners had challenged only the eight-level “aggravated felony” enhancement.¹ Moreover, Mr. Hernandez’s claim is not moot because he has not yet been released from the custody of the Federal Bureau of Prisons (“BOP”).²

¹ See Ramiro Castaneda-Morales, aka Marco Vargas-Bustos, et al. v. United States, No. 16-8734 (U.S. 2018) (order granting, vacating, and remanding for petitioners Hector Ruben Morales-Cardenas, Joel Velasquez-Rios, Jose Guadalupe Vega-Zapata, and Candido Perez-Conde).

² According to the BOP inmate locator, Mr. Hernandez’s release date is September 16, 2019. See <https://www.bop.gov/inmateloc> (last visited May 30, 2018). Petitioners Morales-Cardenas and Velasquez-Rios—referenced above, see supra text, at n.1—have also not yet been released from custody. See id.

The granting of the petitions for writ of certiorari in similar cases raising the same issue constitutes “intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented” sufficient to warrant rehearing of the order denying certiorari in Mr. Hernandez’s case. Sup. Ct. R. 44.2. And as this Court has said before, it is “the basic principle of justice that like cases should be decided alike.” Martin v. Franklin Capital Corp., 546 U.S. 132, 139 (2005). Mr. Hernandez, therefore, requests that the Court grant rehearing of his petition and grant his petition.


CONCLUSION

For the foregoing reasons, petitioner Jaime Adrian Hernandez-Hernandez prays that this Court (1) grant rehearing of the order denying his petition for writ of certiorari in this case, (2) vacate the Court's May 14, 2018, order denying certiorari, and (3) grant the petition for a writ of certiorari, vacate the judgment, and remand to the Fifth Circuit for further consideration in light of Sessions v. Dimaya, 138 S. Ct. 1204 (2018).

Date: May 31, 2018

Respectfully submitted,

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CERTIFICATE OF COUNSEL

As counsel for the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.



MICHAEL HERMAN