

No. 17-6340

IN THE SUPREME COURT OF THE UNITED STATES

KEISHAN H. ENIX, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 5-8) that the definition of a "crime of violence" in 18 U.S.C. 924(c)(3)(B) is unconstitutionally vague in light of Johnson v. United States, 135 S. Ct. 2551 (2015). This Court has granted review in Sessions v. Dimaya, No. 15-1498 (reargument scheduled for Oct. 2, 2017), to decide whether the similarly worded definition of a "crime of violence" in 18 U.S.C. 16(b), as incorporated into the Immigration and Nationality Act's definition of the term "aggravated felony," 8 U.S.C. 1101(a)(43), is unconstitutionally vague. The petition for a writ of certiorari should be held pending the decision in Dimaya and then disposed of as appropriate in light of that decision

Petitioner was convicted of conspiracy to commit robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a); and brandishing a firearm during and relation to a "crime of violence" (namely, the Hobbs Act conspiracy), in violation of 18 U.S.C. 924(c)(1)(A). Section 924(c) 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 lower courts classified Hobbs Act conspiracy as a "crime of violence" under Section 924(c)(3)(B), see Pet. App. A2 at 3, as have several courts of appeals, see, e.g., United States v. Eshetu, 863 F.3d 946, 955-956 (D.C. Cir. 2017) (citing cases).

Because the validity of Section 924(c)(3)(B) is closely related to the issue currently before this Court in Dimaya, supra, the petition should be held pending the decision in Dimaya and then disposed of as appropriate in light of that decision.*

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

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

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