

No. 17-651

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

DOUGLAS D. JACKSON,
Respondent.

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

**RESPONDENT'S SUPPLEMENTAL
BRIEF IN OPPOSITION**

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RESPONSE TO SUPPLEMENTAL BRIEF

1. The Court should not GVR this case to allow the government to argue in the Seventh Circuit that a narrowing construction should be applied to 18 U.S.C. § 924(c). The government candidly admits that it “did not advocate such a construction below, and the court of appeals accordingly did not consider it.” Supp. Br. 5. In fact, the government explicitly conceded the point in its appellate brief in the Seventh Circuit, where it stated:

[T]he “crime of violence” determination is made by the court as a categorical matter of law on a statute-by-statute basis, not by a finder of fact based on whether the defendant’s specific acts in violation of federal law while possessing the firearm created a substantial risk that force would be used.

Br. of United States at 15, *United States v. Jackson*, 865 F.3d 946 (7th Cir. 2017) (No. 15-3693), 2016 WL 3401602.

This case does not provide an opportunity to consider a non-categorical approach or some other narrowing construction of Section 924(c) for the very reasons *Sessions v. Dimaya* did not: “[T]he Government . . . “has not asked us to abandon the categorical approach in residual-clause cases.’ To the contrary . . . the Government has conceded at every step the correctness of that statutory construction.” *Sessions v. Dimaya*, No. 15-1498, slip op. at 13 (U.S. Apr. 17, 2018) (quoting *Johnson v. United States*, 576 U. S. ___, ___ (slip op. at 13) (majority opinion)). As in *Dimaya*, a remand is not warranted here because

the government has conceded the correctness of the categorical approach “at every step,” *id.*; *see also United States v. Jones*, 954, 565 U.S. 400, 413 (2012) (government forfeits arguments not raised below).

2. Even if the government had not conceded the very issue it now wishes to raise in the Court of Appeals after the remand it seeks, a GVR in this case still would not be warranted. The government’s new argument for a narrowing construction is not based on the opinion of the Court in *Dimaya*, which held that the residual clause of Section 924(c) is unconstitutionally vague. Rather, it is based on Justice Gorsuch’s concurrence and Justice Thomas’s dissent. *See* Supp. Br. 3 (citing *Dimaya*, slip op. at 17–18 (opinion of Gorsuch, J.); *id.* at 2 (opinion of Thomas, J.)).

The government does not cite any prior instance in which the Court has issued a GVR to consider a concurrence or a dissent, as opposed to a majority opinion. Nor should the Court do so here.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

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