

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

MAURICE DANIELS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Is 18 U.S.C. § 924(c)(3)(B) (the residual clause definition of “crime of violence”) unconstitutionally vague?

INTERESTED PARTIES

There are no parties interested in the proceeding other than those named in the caption of the case.

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW	i
INTERESTED PARTIES	ii
TABLE OF AUTHORITIES	iv
PETITION	1
OPINION	1
STATEMENT OF JURISDICTION	1
STATUTORY AND OTHER PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	3
CONCLUSION	4
APPENDIX	
Decision of the Court of Appeals for the Eleventh Circuit, <i>Daniels v. United States</i> , No. 16-16338 (Oct. 27, 2017)	1a
Order Denying 28 U.S.C. § 2255 Motion, <i>Daniels v. United States</i> , S.D. Fla. No. 16-cv-22666 (July 28, 2016)	3a

TABLE OF AUTHORITIES

CASES:

<i>Johnson v. United States</i> , 135 S.Ct. 2551 (2015)	2, 3
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STATUTORY AND OTHER AUTHORITY:

U.S. Const., amend. V	1
8 U.S.C. § 1101	4
18 U.S.C. 16(b)	4
18 U.S.C. § 924	2, 3
18 U.S.C. § 1951	2
28 U.S.C. § 1254(1)	1
28 U.S.C. § 2255	1, 2, 3

PETITION FOR WRIT OF CERTIORARI

Maurice Daniels respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit, affirming the denial of Petitioner's motion to vacate conviction under 28 U.S.C. § 2255, entered in case number 16-16338 in that court on October 27, 2017, *Daniels v. United States*.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit affirming the denial of 28 U.S.C. § 2255 relief is contained in the Appendix (1a).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on October 27, 2017. This petition is timely filed pursuant to SUP. CT. R. 13.1.

STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner intends to rely upon the following constitutional provisions, treaties, statutes, rules, ordinances and regulations:

U.S. Const., amend. V (due process clause): “ No person shall ... be deprived of life, liberty, or property, without due process of law”

18 U.S.C. § 16: “The term ‘crime of violence’ means—(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and 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): “For purposes of this subsection the term ‘crime of violence’ means an offense that is a felony and – (A) has as an element the use, attempted 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.”

STATEMENT OF THE CASE

Petitioner’s case presents the issue raised by the United States in its pending petition for certiorari in *United States v. Jackson*, No. 17-651, whether 18 U.S.C. § 924(c)(3)’s residual clause is unconstitutionally vague. *See United States v. Jackson*, 865 F.3d 946 (7th Cir. 2017), *petition for cert. filed*, 2017 WL 5127294 (U.S. Nov. 2, 2017) (No. 17-651).

Petitioner was convicted of two counts of Hobbs Act robbery and two counts of conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951, which proscribes interference with commerce by various means, including extortion and robbery. He was also convicted of two counts of using a firearm during and in relation to a “crime of violence,” in violation of 18 U.S.C. § 924(c)(1)(A)(ii) (Counts 3 and 6). On the § 924(c) convictions, Petitioner received a combined sentence of 384 months imprisonment (consecutive to the 35-month sentence imposed on the Hobbs Act charges). Following his conviction, Petitioner pursued a direct appeal, and the Eleventh Circuit affirmed in 2012. *See United States v. Daniels*, 465 Fed.Appx. 896 (11th Cir. 2012).

In June 2016, Petitioner filed a 28 U.S.C. § 2255 motion to vacate his sentence, challenging his 18 U.S.C. § 924(c) convictions for possessing a firearm in furtherance of a crime of violence because his Hobbs Act offenses did not qualify as predicate crimes of violence under § 924(c). Petitioner argued that the residual clause of § 924(c) is unconstitutionally vague under *Johnson v.*

United States, 135 S.Ct. 2551 (2015). The district court denied the § 2255 motion. The Eleventh Circuit affirmed. App. 1a. The court of appeals’ decision, in its entirety, states follows:

Maurice Daniels appeals the denial of his motion to vacate. 28 U.S.C. § 2255. We issued a certificate of appealability to address whether Daniels is entitled to relief from his firearm convictions on the ground that *Johnson v. United States*, 135 S. Ct. 2551 (2015), invalidated the “risk of force” clause in 18 U.S.C. § 924(c)(3)(B). We affirm the denial of Daniels’s motion.

Daniels’s argument is foreclosed by our recent decision in *Ovalles v. United States*, 861 F.3d 1257 (11th Cir. 2017). In *Ovalles*, we held “that Johnson’s void-for-vagueness ruling does not apply to or invalidate the ‘risk-of-force’ clause in § 924(c)(3)(B).” *Id.* at 1265. ***Because section 924(c)(3)(B) is not unconstitutionally vague, Daniels is not entitled to relief from his convictions.***

We AFFIRM the denial of Daniels’s motion to vacate.

App. 1a-2a (emphasis added).

REASONS FOR GRANTING THE WRIT

The Solicitor General is seeking certiorari on the question squarely presented in this petition: whether the residual clause of the crime of violence definition of 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague in light of *Johnson v. United States*, 576 U.S. —, 135 S.Ct. 2551 (2015). See *United States v. Jackson*, 865 F.3d 946 (7th Cir. 2017), *petition for cert. filed*, 2017 WL 5127294 (U.S. Nov. 2, 2017) (No. 17-651). For the reasons articulated in the Solicitor General’s petition, the Court should resolve the circuit conflict on the vague language used in Section 924(c)’s residual clause and its constitutionality under *Johnson v. United States*, 576 U.S. —, 135 S.Ct. 2551 (2015). Hence, the Court should grant certiorari in petitioner’s case or hold petitioner’s case pending resolution of the petition in *Jackson*. The dramatic impact of the application of Section 924(c) in the present case, a consecutive mandatory sentence of 32 years, in addition to the sentence

imposed for the Hobbs Act offenses, reveals the significance of this issue in this and many other cases.

The question presented in this case is related to the issue currently before this Court in *Sessions v. Dimaya*, No. 15-1498. *Dimaya* presents the question whether the definition of “crime of violence” contained in 18 U.S.C. § 16(b), as incorporated into the provisions of the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., governing an alien’s removal from the United States, is unconstitutionally vague. The government has argued in part that, because removal of an alien is a civil proceeding, the statutes that govern removability are subject to a lesser standard of definiteness than is applied in the criminal context. *See* Gov’t Br. at 13-25, *Dimaya*, *supra* (No. 15-1498). But if the Court in *Dimaya* concludes that Section 16(b) is unconstitutionally vague, that holding would likely inform a resolution of the question presented in this petition and that of the Solicitor General in *United States v. Jackson*, No. 17-651.

CONCLUSION

The Court should grant the petition for writ of certiorari or hold the case pending the decision in *Dimaya* and the resolution of the Solicitor General’s petition in *Jackson*, No. 17-651.

Respectfully submitted,

RICHARD C. KLUGH, ESQ.
Counsel for Petitioner

Miami, Florida
January 2018

APPENDIX

APPENDIX

Decision of the Court of Appeals for the Eleventh Circuit, <i>Daniels v. United States</i> , No. 16-16338 (Oct. 27, 2017)	1a
Order Denying 28 U.S.C. § 2255 Motion, <i>Daniels v. United States</i> , S.D. Fla. No. 16-cv-22666 (July 28, 2016)	3a

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-16338
Non-Argument Calendar

D.C. Docket Nos. 1:16-cv-22666-CMA,
1:10-cr-20277-CMA-1

MAURICE DANIELS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(October 27, 2017)

Before TJOFLAT, WILLIAM PRYOR and NEWSOM, Circuit Judges.

PER CURIAM:

Maurice Daniels appeals the denial of his motion to vacate. 28 U.S.C.
§ 2255. We issued a certificate of appealability to address whether Daniels is

entitled to relief from his firearm convictions on the ground that *Johnson v. United States*, 135 S. Ct. 2551 (2015), invalidated the “risk of force” clause in 18 U.S.C. § 924(c)(3)(B). We affirm the denial of Daniels’s motion.

Daniels’s argument is foreclosed by our recent decision in *Ovalles v. United States*, 861 F.3d 1257 (11th Cir. 2017). In *Ovalles*, we held “that *Johnson*’s void-for-vagueness ruling does not apply to or invalidate the ‘risk-of-force’ clause in § 924(c)(3)(B).” *Id.* at 1265. Because section 924(c)(3)(B) is not unconstitutionally vague, Daniels is not entitled to relief from his convictions.

We **AFFIRM** the denial of Daniels’s motion to vacate.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 16-22666-CIV-ALTONAGA

MAURICE DANIELS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS CAUSE came before the Court upon Movant, Maurice Daniels’s (“Daniels[’s]” or “Movant[’s]”) Motion Under 28 U.S.C. § 2255 . . . (“Motion”) [ECF No. 1], filed on June 26, 2016. Respondent, United States of America (“Respondent” or “the Government”) filed a Response . . . (“Response”) [ECF No. 5] on July 12, 2016. To date, Movant has not filed a reply. The Court has reviewed the parties’ submissions, the record, and applicable law.

I. BACKGROUND

On November 22, 2010, a jury convicted Daniels of crimes arising from his participation in two armed robberies targeting security guards working at shopping malls in Florida. (*See United States v. Daniels*, Case No. 10-cr-20277-ALTONAGA (S.D. Fla. 2010) (“*Daniels I*”) Verdict [ECF No. 182]; *see also* Superseding Indictment [ECF No. 28]). In particular, Daniels was convicted of: (1) two counts of conspiring to commit robbery (Counts 1 and 4 or “Conspiracy Counts”); (2) two counts of interfering with commerce through robbery, in violation of the Hobbs Act, 18 U.S.C. section 1951 (Counts 2 and 5 or “Hobbs Act Counts”); (3) and two counts of possessing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. section 924(c) (Counts 3 and 6 or “924(c) Counts”). (*See generally* Verdict; *see also*

Superseding Indictment). The Court sentenced Daniels to 35 months' imprisonment on each of Counts 1, 2, 4, and 5; 84 months on Count 3; and 300 months on Count 6, to run consecutively, for a total of 419 months. (*See Daniels I*, Judgment in a Criminal Case [ECF No. 198]).

Daniels argues, in the aftermath of the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015), he is innocent of the section 924(c) Counts because the Hobbs Act Counts and Conspiracy Counts do not qualify as predicate crimes of violence. (*See Mot. 1*). Specifically, the section 924(c) Counts require possessing a firearm in furtherance of a crime of violence, and Daniels contends his other counts do not qualify as crimes of violence. (*See id.*). Thus, he asserts his convictions and sentences based on the section 924(c) Counts must be vacated. (*See id.*). The Government opposes Daniels's Motion. (*See generally Resp.*).

II. LEGAL STANDARD

In *Johnson*, the Supreme Court of the United States held imposing an increased sentence under the residual clause of the Armed Career Criminal Act ("ACCA"), 18 U.S.C. section 924(e), violates due process. 135 S. Ct. at 2563. The ACCA residual clause defines a violent felony as any felony involving "conduct that presents a serious potential risk of physical injury to another." 18 U.S.C. § 924(e)(2)(B)(ii). The Court explained the residual clause left "uncertainty about how much risk it takes for a crime to qualify as a violent felony. . . . [T]hese uncertainties produce more unpredictability and arbitrariness than the Due Process Clause tolerates." *Johnson*, 135 S. Ct. at 2554 (alterations added). The Court further stated the decision did "not call into question application of the Act to the four enumerated offenses, or the remainder of the Act's definition of a violent felony[.]" *id.* at 2563 (alteration added), but instead was limited to the residual clause. *See id.*

Distinct from the sentence provisions in section 924(e) of the ACCA, section 924(c)(1)(A) provides for a separate consecutive sentence if any person uses or carries a firearm during and in relation to a crime of violence or drug trafficking crime, or possesses a firearm in furtherance of such crime. See *In re Gordon*, No. 16-13681-J, 2016 WL 3648472, at *3 (11th Cir. July 8, 2016). Section 924(c)(1)(A) provides for additional sentencing for “any person who, during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm.” 18 U.S.C. § 924(c)(1)(A) (alterations added).

Sections 924(c)(3)(A) and (B) define “crime of violence” as an offense that is a felony and: “(A) has as an element the use, attempted 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.” *Id.* § 924(c)(3). The former clause is referred to as the “use-of-force” clause; the latter clause is the “section 924(c)(3)(B) residual clause.” The Eleventh Circuit has acknowledged the law is unsettled regarding whether *Johnson* invalidates sentences that relied on the section 924(c)(3)(B) residual clause, as this clause is similar, but not identical, to the ACCA residual clause. See *In re Saint Fleur*, No. 16-12299-J, 2016 WL 3190539, at *3 (11th Cir. June 8, 2016) (citing *In re Pinder*, No. 16-12084-J, 2016 WL 3081954, at *1–2 (11th Cir. June 1, 2016)).

III. ANALYSIS

In his Motion, Daniels argues his section 924(c) convictions for using or carrying a firearm in relation to a crime of violence are void because the “crime of violence” element is not satisfied. (See Mot. 9). Specifically, Daniels contends the Hobbs Act Counts and Conspiracy

Counts do not qualify as crimes of violence because: (1) the section 924(c)(3)(B) residual clause is unconstitutionally vague in light of *Johnson*; and (2) the Hobbs Act Counts and Conspiracy Counts do not satisfy the elements of the use-of-force clause. (*See id.* 9, 13). The Government responds: (1) *Johnson* does not apply to the section 924(c)(3)(B) residual clause; and (2) even if it does, the Eleventh Circuit has repeatedly ruled, post-*Johnson*, that commission of a Hobbs Act robbery remains a valid predicate crime of violence for the purpose of a section 924(c) conviction under the use-of-force clause. (*See Resp.* 1–2). Because the Court finds the Eleventh Circuit’s holdings regarding Hobbs Act robbery and predicate crimes of violence dispositive, the Court addresses solely this issue.

As the Government argues in its Response, the Eleventh Circuit has repeatedly held a Hobbs Act robbery violation fits within section 924(c)(3)(A)’s definition of a crime of violence. *See In re Gordon*, 2016 WL 3648472, at *4 (“This Court has held that a companion Hobbs Act robbery conviction, such as [Movant’s], qualifies as a ‘crime of violence’ under the use-of-force clause in § 924(c)(3)(A) without regard to the § 924(c)(3)(B) residual clause.” (alteration added)); *see also In re Saint Fleur*, 2016 WL 3190539, at *3 (“Saint Fleur’s companion conviction for Hobbs Act robbery, which was charged in the same indictment as the § 924(c) count, clearly qualifies as a ‘crime of violence’ under the use-of-force clause in § 924(c)(3)(A).”). In fact, the *Gordon* Court specifically stated *Saint Fleur*’s holding that a substantive Hobbs Act robbery qualifies as a crime of violence under section 924(c)(3)(A) “controls,” and it is unnecessary to reach the question of whether *Johnson* invalidated the section 924(c)(3)(B) residual clause.¹ *See In re Gordon*, 2016 WL 3648472, at *4.

¹ Movant attempts to distinguish *Saint Fleur* on the ground the decision was made without the benefit of briefing and in the context of a successive petition, as opposed to an initial petition. (*See Mot.* 14). The Court finds these distinctions unpersuasive, especially as the Eleventh Circuit explicitly confirmed its *Saint Fleur* holding in *Gordon*, which Movant does not address.

Thus, because Movant was convicted of two counts of substantive Hobbs Act robbery, and the Eleventh Circuit has held Hobbs Act robbery fits within section 924(c)(3)(A)'s definition of a crime of violence, Movant's convictions for Counts 3 and 6 remain valid.

Additionally, a certificate of appealability "may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (alteration added). The Supreme Court of the United States has described the limited circumstances when a certificate of appealability should properly issue after the district court denies a habeas petition:

Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The Movant must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.

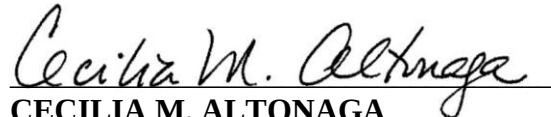
Slack v. McDaniel, 529 U.S. 473, 484 (2000). Daniels does not satisfy this burden, and the Court will not issue a certificate of appealability.

IV. CONCLUSION

Based on the foregoing analysis, it is

ORDERED AND ADJUDGED that the Motion [ECF No. 1] is **DENIED**. A certificate of appealability shall not issue. The Clerk is instructed to mark this case as **CLOSED**.

DONE AND ORDERED in Miami, Florida, this 28th day of July, 2016


CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record