

No: 17-8538

IN THE SUPREME COURT OF THE UNITED STATES

LISTON WATSON, Petitioner

v.

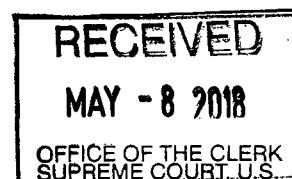
UNITED STATES, Respondent

ON PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

MOTION TO SUPPLEMENT PETITION

Respectfully Submitted

Liston Watson
Reg. No. 73392-061
— F.C.I. Berlin
P.O. BOX 9000
Berlin NH, 03570



Liston Watson
Pro-se, Petitioner
Reg. No. 73392-061
F.C.I. Berlin
P.O. Box 9000
Berlin NH, 03570

April 27, 2018

Scott Harris Clerk of Court
United States Supreme Court
1 First Street, NE
Washington DC, 20543

RE: Liston Watson Petitioner No: 17-8538

Dear Mr. Scott Harris Clerk of Court:

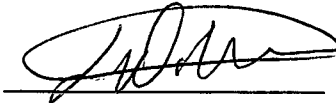
Please let this letter serve as a motion to supplement petitioner's application for Writ of Certiorari filed under 28 U.S.C. § 1254; (1) with the following supplemental authority of Rule 29. Specifically, petitioner writes this letter to call this Court's attention to its recent decision in **Dimaya v. United States**, U.S. NO 15-1498 in which this Court held that section 16's definition of a crime of violence is divided into two clauses often referred to as the elements clause, § 16(a), and the residual clause, § 16(b). The residual clause, the provision at issue here defines a "crime of violence" as 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" under the Fifth Amendment's Due Process Clause .

Relying on **Johnson**, the Ninth Circuit held that 16(b) was unconstitutionally vague. See **Dimaya v. Lynch**, 803 F.3d 1110,11120 (2015). The Sixth Circuit and Seventh Circuit subsequently reached the same conclusion. See, **Shuti v. Lynch**, 828 F.3d 440 (6th Cir. 2016); **United States v. Wivas-Ceja**, 808 F. 3d 719 (7th Cir. 2015). However the Fifth Circuit distinguished the ACCA's residual clause from 16(b)'s. See, **United States v. Gonzales-Longoria**, 813 F.3d 678 (5th Cir. 2016)(enbanc).

On April 17, 2018, the Supreme Court issued in **Dimaya U.S. No. 15-1498** held that a similar worded §16 as incorporate into the INA, was also

unconstitutionally vague. Under **Dimaya** the Supreme Court held that imposing an increased sentence under the residual clause in the (ACCA) defining "violent felony" as any felony that "otherwise involves conduct that present a serious potential risk of physical injury to another," 18 U.S.C. § 924(e)(2)(B) was unconstitutionally vague "void for vagueness" under the Fifth Amendment's Due Process Clause. Specifically, this Court concluded that "the indeterminacy of the wide-ranging inquiry required by the residual clause both denies fair notice and invites arbitrary enforcement by judges," and "[i]ncreasing a defendant's sentence under the clause denies due process of law." Finding section 16(b) vague in all its applications.

Sincerely,

A handwritten signature in black ink, appearing to read 'Liston Watson', is written over a horizontal line.

Liston Watson

4/22/18

Petitioner, Liston Watson, Pro-se, respectfully request that this Court, pursuant to 28 U.S.C § 1254(1) authorize him to file a supplement under Rule 29. Mr. Watson makes this request so that he may immediately assess a challenge to his convictions for possessing a firearm during and in relation to a "crime of violence" in violation of 18 U.S.C. § 924(c). Specifically, Mr. Watson seeks to challenge his 924(c) convictions based on **Dimaya v. United States** U.S. 15-1498 (2018)

Stemming from **Johnson v. United States**, 135 S.Ct. 2551 (2015). This Court found the residual clause of section 16(b) unconstitutional because it suffered the same two defects as the ACCA's residual clause judicial assessment of risk to a judicially "ordinary case" and grave uncertainty about how much risk it takes for a crime to qualify as a "crime of violence." Based on this it should follow that any other statute that suffers the same two fatal flaws is equally void for vagueness.

I. Does Dimaya Means That Mr. Watson's 924(c) Convictions are Unconstitutional?

18 U.S.C 16(b) defines a "crime of violence as

a) an offense that has 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.

In order to be convicted of a violation of 18 U.S.C. § 924(c), the possession of a firearm must be either in furtherance of a "crime of violence" identical to section 16(b). Then logically one can conclude that if the

residual clause of 16(b) is unconstitutionally vague then so must be the residual clause of 18 U.S.C. § 924(c)(3)(B)

On April 25, 2016 Mr. Watson plead guilty to two counts of possessing a firearm during and in relation to a "crime of violence" in violation of 18 U.S.C. § 924(c) (Counts Two and Six). Specifically, the count allege that the underlying "crime of violence" for the 924(c) charges was bank robbery in violation of 18 U.S.C. § 2113(a) and (d).

The relevant portion of § 924(c) defining a "crime o violence" has two clauses. The first caluse-§ 924(c)(3)(A)- is commonly referred to as the force clause. The other-§ 924(c)(3)(B) is commonly referred to as the residual clause. The residual clause is now void for vagueness in light of **Dimaya**. Petitioner's bank robbery categorically fails to qualify as a "crime of violence under the remaining force clause wherein the element of force capable to cause injury was never met. Therefore, the "crime of violence" element cannot be satisfied under § 924(c), and a conviction cannot be constitutionally sustained under a statue, leaving only the residual clause to satisfy his conviction.

Even though "**DIMAYA**" is a case about what constitutes an "aggravated felony" under the Immigration and Nationality Act (INA), Nevertheless, it is applicable to the specificity of Petitioner's predicate bank robbery Count One in violation of 18 U.S.C. § 2113(a) and (d) and Count Two and Six in violation of 18 U.S.C. § 924(c). The Supreme in "**DIMAYA**" extended its ruling in **Johnson V. United States**, 135 S.Ct. 2551 (2015) to hold the residual clause of 18 U.S.C. 16(b) is unconstitutionally vague. Section 16 defines the term "crime of violence" as used in the (INA) as well as other statues.

To begin with, in "**DIMAYA**" the Supreme Court concluded that a straight forward application of **Johnson** effectively resolves this case. Section 16(b)

has the same two features as ACCA's residual clause-an ordinary -case requirement and an ill-defined risk threshold -combined in the same constitutionally problematic way. Affirming the decision in **Johnson** that 18 U.S.C § 924(e)(2)(B)(iii) is unconstitutionally vague. 135 S.Ct. at 2557 under **Johnson**, § 924(c)'s materially indistinguishable residual clause (§ 924(c)(3)(B) must similarly be stricken as unconstitutional.

It is also noteworthy that in light of **Johnson**, the Government through the Solicitor General agreed that the phrase at issue in Johnson and here in **DIMAYA** pose the same problem. Upon recognizing that the definitions of a "crime of violence" in both § 924(c)(3)(B) and § 16(b) are identical, the Solicitor General stated: **Johnson v. United States**, S. Ct. No 13-7120, Supplemental Brief of Respondent United States at 22-23(available at 2015 WL 1284964 at *22-*23)(March 30, 2015). The Solicitor General was right. Section 924(c)(3)(B) and ACCA are essentially the same and contained the same flaws. This Court should hold the Government to that Concession. Indeed, the rationale of **Dimaya** equally applies to the determination of whether an offense qualifies as a "crime of violence" under 18 U.S.C. § 924(c) relying on the same reasoning of **Dimaya** and **Vivas-Ceja**, two district courts recently found that the § 924(c) residual clause was void for vagueness. See, **United States v. Lattanaphom**, F.Supp. 3d 2016 WL393545 (E.D.CA1. 2016); **United States v. Edmundson**, F.Supp. 3d, 2015 WL 9582736 (D. Md. Dec. 30, 2015). As further detailed these cases compel the same conclusion here.

Likewise Mr. Watson Bank Robbery offenses does not qualify as a "crime of violence" under § 924(c) remaining force clause (§ 924(c)(3)(A) for three independent reasons.

First, bank robbery categorically fails to qualify as a "crime of violence" because it can be accomplished by putting another in fear of injury

which does not require the threat of physical force to property necessary under § 924(c)(3)(B) force clause.

Second, bank robbery can be violated by placing another person in fear of physical injury , which the Fourth Circuit in **United States v. Torres-Miguel**, 710 F.3d 165 (4th Cir. 2012) squarely held does it not require the threat of violent physical force necessary to qualify as a "crime of violence" under § 924(c)(3)'s force clause.

Third, bank robbery is not a "crime of violence" under the force clause because it does not require the intentional use, threatened use, or attempted use of violent physical force. This is true because the offense can be accomplished without any intent to put another in fear of injury to his person or property. It is plain that the "intimidation " element of federal bank robbery is missing this necessary intentional mens rea required under **Garcia**. "Intimidation" is satisfied under the bank robbery statute whether or not the defendant actually intend the intimidation as long as "an ordinary person in the [victim's] position reasonably could infer a threat of bodily harm from the defendant's acts. Because the "full range of conduct" covered by the bank robbery statute does not require "violent force," it simply cannot qualify as a "crime of violence" under § 924(c)'s force clause. See Supra. Title 18 U.S.C. § 924(c)(A)(1) provides sentencing enhancement for "any person who during and in relation to any "crime of violence" uses or carries a firearm, or who, in furtherance of any such crime possesses a firearm". The definition of "crime of violence" in § 924(c)(3)(B) is identical to the definition found in 18 U.S.C. 16(b).

Because Bank Robbery categorically fails to qualify as a "crime of violence" under § 924(c), Mr. Watson § 924(c) conviction is void.

As a result, Mr. Watson's § 924(c) convictions: 1) violates due process; 2)

violates the United States laws and results in a fundamental miscarriage of justice; and 3) was entered in excess of the district court's jurisdiction.

WHEREFORE Mr. Watson urges this Court to grant his motion for Writ of Certiorari so that he may pursue the vacature of his § 924(c)'s convictions in the above-described **Dimaya** claim in this Court.

Respectfully Submitted on this 27 day of April 2018



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