
No.

KIOND JONES,

Petitioner,

v.

UNITED STATES DISTRICT COURT

Respondent.

On Petition For Writ Of Certiorari
to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER REMAND IS REQUIRED IN LIGHT OF SESSIONS V. DIMAYA, 138 S.CT. 1204 (2018) AND JOHNSON V. UNITED STATES, 135 S.CT. 2551 (2015).

LIST OF PARTIES

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

AND NOW, comes the Petitioner Kiond Jones, pro se and petitions this Court for a writ of certiorari to review the judgment entered in this case by the United States Court of Appeals for the Second Circuit.

OPINION BELOW

The Not Precedential opinion of the United States Court of Appeals for the Second Circuit appears at Appendix A. See also United States v. Jones, No. 16-3397-cr (2nd Cir. 2018).

JURISDICTION

On March 28, 2018, the United States Court of Appeals for the Second Circuit entered the opinion and judgment sought to be reviewed. No petition for rehearing was filed in this case. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Indictment S109Cr.395 charged Petitioner Kiond Jones and two co-defendants, Anthony Praddy and Torell Whyte, in a 15-count indictment charging racketeering, murder, marijuana distribution and related weapons offenses. Jones was charged in five counts: racketeering (Count One), racketeering conspiracy (Count Two), marijuana conspiracy (Count Four), use of a firearm in connection with a crime of violence charged in Count One and Two (Count Twelve) and use of a firearm in connection with a drug trafficking crime charged in Count Four (Count Fourteen).

Jones and Praddy proceeded to trial. Jury trial commenced before the Honorable Frederic Block on September 22, 2010, and concluded on October 14, 2010 with a verdict of guilty, convicting Jones on all five counts in which he was charged.

On September 7, 2012, the district court sentenced Jones to a total term of imprisonment of 50 years: 180 months (15 years) on each of Count One, Two and Four to run concurrently, 10 years on Count Twelve to run consecutively to Counts One, Two and Four, and 25 years on Count Fourteen to run consecutively to Count One, Two, Four and Twelve. In addition, the court imposed terms of three years supervised release on each count to run concurrently and a total special assessment of \$500.

Jones appealed his conviction and sentence. The Second Circuit reversed the conviction on Count Fourteen, use of a firearm in furtherance of the marijuana conspiracy, in violation of 18 USC § 924(c), vacated the 25-year consecutive sentence imposed on that count, and remanded the case for resentencing.

On September 21, 2016, the district court resentenced Jones to a total term of imprisonment of 30 years: 240 months on each of Counts One and Two and Four to run concurrently, and 10 years on Count Twelve to run consecutively to Counts One, Two and Four. In addition, the court imposed a three year term of supervised release, 200 hours of community service, and a total special assessment of \$400. Subsequently, Jones appealed his conviction and sentence. On March 28, 2018, the Second Circuit issued a summary order affirming Jones conviction.

REASONS FOR GRANTING THE WRIT

POINT 1

REMAND IS REQUIRED IN LIGHT OF SESSIONS V. DIMAYA, 138 S.CT. 1204 (2018) AND JOHNSON V. UNITED STATES, 135 S.CT. 2551 (2015)

(a) The Dimaya decision

The core issue in this action centers on whether the logic of Dimaya, supra, invalidates 18 U.S.C. § 924(c)(3)(B).

Jones contends that this Court should remand his case back to the Second Circuit with instructions to vacate his § 924(c)(1) conviction and resentence him because § 924(c)(3)(B), the provision defining a "crime of violence" for the purposes of his conviction on Count Twelve, is unconstitutionally vague. See Sessions v. Dimaya, (No. 15-1498)(S.Ct. April 17, 2018).

Section 924(c)(3)(B) is unconstitutionally vague. In *Sessions v. Dimaya*, *supra* the Supreme Court held that 18 U.S.C. § 16(b)'s definition of a "crime of violence" is unconstitutionally vague in light of its reasoning in *Johnson v. United States*, 135 S.Ct. 2551 (2015), which invalidated the similarly worded residual definition of a "violent felony" in the Armed Career Criminal Act (ACCA). 2018 WL 1800371, at *4; see also *Golicov v. Lynch*, 837 F3d 1065, 1072 (10th Cir. 2016) (ruling that § 16(b) "must be deemed unconstitutionally vague in light of Johnson"). The *Dimaya* Court explained that the same two features rendered the clauses unconstitutionally vague: they "require[] a court to picture the kind of conduct that the crime involves in 'the ordinary case,' and to judge whether that abstraction presents some not-well-specified-yet-sufficiently-large degree of risk." *Dimaya*, 2018 WL 1800371, at *9 (quoting *Johnson*, 135 S.Ct. at 2557). The Court also rejected several reasons for distinguishing § 16(b) from the ACCA, namely that § 16(b) requires a risk that force be used in the course of committing the offense, focuses on the use of physical force rather than physical injury, does not contain a confusing list of enumerated crime, and does not share the ACCA's history of interpretive failures. *Id.* at *12.

Jones contends that § 924(c)(3)(B)'s definition of a "crime of violence," which is identical to § 16(b)'s, 2 is likewise unconstitutionally vague. See *In re Hubbard*, 825 F3d 225, 230 n.3 (4th Cir. 2016) ("[T]he language of § 16(b) is identical to that in § 924(c)(3)(B), and we have previously treated precedent respecting one as controlling analysis of the other.") In fact, the Seventh Circuit has faced the same scenario that this Court face now: it ruled that § 16(b) was unconstitutionally vague in *United States v. Vivas-Ceja*, 808 F3d 719 (7th Cir. 2015), and then addressed the constitutionality of § 924(c)(3)(B) in *United States v. Cardena*, 842 F3d 959 (7th Cir. 2016). In *Cardena*, the Seventh Circuit ruled that § 924(c)(3)'s residual clause was "the same residual clause contained in [§ 16(b)]" and accordingly held that "§ 924(c)(3)(B) is also unconstitutionally vague." *Cardena*, 842 F3d at 996.

The Second Circuit and just as well as other circuits have upheld § 924(c)(3)(B)'s constitutionality, but they were not faced, as we are here, with binding authority holding § 16(b) unconstitutional. See *United States v. Hill*, 832 F3d 135, 150 (2d Cir. 2016); *United States v. Garcia*, 857 F3d 708, 711 (5th Cir. 2017); *United States v. Esheto*, 863 F3d 946, 955 (D.C. Cir. 2017); *United States v. Prickett*, 839 F3d 697, 699 (8th Cir. 2016); *United States v. Taylor*, 814 F3d 340, 379 (6th Cir. 2016). For the most part, the grounds for their decisions apply equally to § 16(b) and mirror the distinctions between the ACCA's residual clause and § 16(b) that were rejected in *Dimaya*.

Notably, only the Sixth Circuit has held that § 924(c)(3)(B) is constitutional while § 16(b) is not. See *Shuti v. Lynch*, 828 F3d 440, 446 (6th Cir. 2016) (ruling that § 16(b) is unconstitutionally vague); *Taylor*, 814 F3d at 375-76 (rejecting a void-for-vagueness challenge to § 924(c)(3)(B)). The Sixth Circuit stated that the provisions differed because in contrast to § 16(b), § 924(c) is a criminal offense and "creation of risk is an element of the crime," which "requires an ultimate determination of guilt beyond a reasonable doubt by a jury, in the same proceeding." *Shuti*, 828 F3d at 449 (quoting *Johnson*, 135 S.Ct. 2557). It further noted that courts evaluate this risk based on the defendant's actual conduct. *Id.* This is a distinction without a difference, though, and is incorrect to the extent it suggests that whether an offense is a crime of violence depends on the defendant's specific conduct. As an initial matter, a law can be unconstitutionally vague even if it is a criminal offense that requires a determination of guilt beyond a reasonable doubt. E.g., *Papachristou v. City of Jacksonville*, 405 U.S. 156, 171 (1972) (invalidating a vagrancy ordinance). Additionally, "[w]hether a crime fits the § 924(c) definition of a 'crime of violence' is a question of law," *United States v. Morgan*, 748 F3d 1024, 1034 (10th Cir. 2014), and we employ the categorical approach to § 924(c)(3)(B), meaning we determine whether an offense is a crime of violence "without inquiring into the specific conduct of this particular offender." Consequently, § 924(c)(3)(B), like § 16(b)

"requires a court to ask whether 'the ordinary case' of an offense poses the requisite risk." Dimaya, 2018 WL 1800371, at *5 (quoting *James v. United States*, 550 US 192, 208 (2007)), overruled on other grounds by *Johnson*, 135 S.Ct. 2551). Regardless of whether a jury must find the defendant guilty of § 924(c) beyond a reasonable doubt, then, this "ordinary-case requirement and an ill-defined risk threshold" combines "in the same constitutionally problematic way" as § 16(b) and "necessarily 'devolv[es] into guesswork and institution,' invit[es] arbitrary enforcement and fail[s] to provide fair notice." Id. at *7, *16 (quoting *Johnson*, 135 S.Ct. at 2559).

Ultimately, § 924(c)(3)(B) possesses the same features as the ACCA's residual clause and § 16(b) that combine to produce "more unpredictability and arbitrariness than the Due Process Clause tolerates," Id. at *16 (quoting *Johnson*, 135 S.Ct. at 2558), and Dimaya's reasoning for invalidating § 16(b) applies equally to § 924(c)(3)(B). Section 924(c)(3)(B) is likewise unconstitutionally vague. Here, although the Supreme Court has explicitly addressed the constitutionality of § 924(c)(3)(B), it have directly ruled on the constitutionality of identical language in § 16(b). See Dimaya, 2018 WL 1800371, at *4. The identical wording of § 16(b) and § 924(c)(3)(B) means that the provisions contain the same two features of the ACCA's residual clause that "conspire[d] to make it unconstitutionally vague." Dimaya, 2018 WL 1800371 at *16 (alteration in original)(quoting *Johnson*, 135 S.Ct. at 2557) Accordingly, Dimaya compels the conclusion that § 924(c)(3)(B) is unconstitutional, too.

In sum, the reasons why § 16(b) is unconstitutionally vague apply equally to § 924(c)(3)(B). Because they are identically worded, this Court should interpret § 16(b) and § 924(c)(3)(B) similarly. As a result, Jones conviction under § 924(c)(1) was clearly erroneous under Supreme Court precedent. For these reasons, remand for resentencing is required, with instructions to the Second Circuit to vacate Count Twelve of Jones conviction.

(b) The Johnson decision

The conviction on Count Twelve and the 10-year consecutive sentence imposed for use and discharge of a firearm in furtherance of a crime of violence should be vacated because under a categorical approach the predicate racketeering acts charged in Counts One and Two of this Indictment are not crimes of violence. The district court mistakenly increased Jones' original sentence on Counts One, Two, and Four or abused its discretion in doing so.

ARGUMENT

POINT I

JONES' CONVICTION ON COUNT TWELVE AND THE 10-YEAR CONSECUTIVE SENTENCE IMPOSED FOR USE AND DISCHARGE OF A FIREARM IN FURTHERANCE OF A CRIME OF VIOLENCE SHOULD BE VACATED BECAUSE UNDER A CATEGORICAL APPROACH RACKETEERING AND RACKETEERING CONSPIRACY AS CHARGED IN THIS INDICTMENT ARE NOT CRIMES OF VIOLENCE.

Kiond Jones argues that his conviction on Count Twelve, for violation of 18 U.S.C. § 924(c)(1)(A)(ii) and (iii), and the related mandatory consecutive 10-year sentence were illegally imposed. Jones claims that the offense of racketeering, in violation of 18 U.S.C. §§ 1962(c) and 1963(a), and the offense of racketeering conspiracy, in violation of 18 U.S.C. §§ 1962(d) and 1963(a), based on the predicate acts charged in this Indictment, are not crimes of violence within the meaning of 18 U.S.C. § 924(c)(3).

Under the categorical approach employed by this Court, both the substantive and inchoate crimes of racketeering as charged do not qualify as crimes of violence under either § 924(c)'s "force" clause (§ 924(c)(3)(A)) or "risk-of-force" clause, (§ 924(c)(3)(B)), because RICO can be committed without physical force or the threat or risk of physical force. Nor can either racketeering offense qualify as a crime of violence under the "risk-of-force" (§ 924(c)(3)(B)) because the Supreme Court's decision in *Johnson v. United States*, ___ U.S. ___, 135 S. Ct. 2551 (2015) ("*Johnson II*") effectively rendered that clause unconstitutionally vague. See *United States v. Williams*, 553 U.S. 285, 304 (2008) (explaining that the vagueness doctrine holds that a criminal statute is invalid when it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement").

Count Twelve of the Indictment charged Kiond Jones with carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. 924(c). Specifically, it alleged that Jones used or carried a firearm in relation to the underlying "crime of violence" alleged in Counts One and Two of the Indictment, racketeering and racketeering conspiracy in violation of 18 U.S.C. § 1962. Moreover, the underlying racketeering acts upon which § 924(c) depends - kidnapping in the second degree and attempted murder under New York law - fail to qualify as crimes of violence within the meaning of §§ 924(c)(3)(A) and (B).

The “Categorical Approach”

Courts employ a "categorical approach" to determine whether a criminal act qualifies as a predicate crime of violence as defined under either the force clause or risk-of-force clause of § 924(c)(3). *United States v. Hill*, 832 F.3d 135, 139 (2d Cir. 2016) *See Descamps v. United States*, 133 S. Ct. 2276, 2283 (2013); *United States v. Acosta*, 470 F.3d 132, 135 (2d Cir. 2006). Under the categorical approach, a court must "focus on the intrinsic nature of the offense rather than on the circumstances of a particular crime." *United States v. Ivezaj*, 568 F.3d 88, 95 (2d Cir. 2009) (citing *Acosta*, 470 F.3d. at 135)). "The categorical approach requires a court to consider an offense in terms of how the law defines the offense and not in terms of how an individual offender might have committed it on a particular occasion." *United States v. Van Mead*, 773 F.3d. 429, 432 (2d Cir. 2014) (quoting *Begay v. United States*, 553 U.S. 137, 141 (2008)). Under this approach, courts “look only to the statutory definitions — *i.e.*, the elements — of a defendant's [offense] and not to the particular facts underlying [the offense]” in determining whether the offense qualifies as a “crime of violence.” *Descamps*, 133 S. Ct. at 2283 (citation omitted).

Under the categorical approach, a predicate offense can only qualify as a “crime of violence” if *all* of the criminal conduct is covered by a statute. *Johnson v. United States*, 135 S. Ct. 2551 (“*Johnson II*”). If the most innocent conduct

penalized by a statute does not constitute a “crime of violence,” then the statute categorically fails to qualify as a “crime of violence.”

Statutory Framework

A number of state federal and state statutes cited in the Indictment are subject to categorical analysis.

18 U.S.C. § 924(c) – Use of a Firearm in Relation to a Crime of Violence

Count Twelve of the Indictment charged Jones with Unlawful Use of a Firearm. In pertinent part, Count Twelve alleged:

Jones . . . did knowingly and intentionally *use and carry a firearm during and in relation to one or more crimes of violence, to wit: the crimes charged in Counts One, Two . . .*, and did knowingly and intentionally possess a firearm in furtherance of said crimes of violence, which firearm was brandished and discharged. (Title 18, United States Code, Sections 924(c)(1)(A)(ii), 924(c)(1)(A)(iii), 2 and 3551 *et seq.*).

(A-27, emphasis added).

The statutory framework of § 924(c) makes it unlawful to use, carry, brandish or discharge a firearm in furtherance of a “crime of violence” and mandates imposition of minimum consecutive sentences in addition to the predicate crime of violence, § 924(c)(1)(A): (i) five years for use or carry, (ii) seven years for brandishing, and (iii) 10 years for discharging a firearm.

Section 924(c)(3) defines “crime of violence” as a felony that: “(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." 18 U.S.C. § 924(c)(3) (emphasis added). This Court refers to subsection (A) as the "force clause" and subsection (B) as the "risk-of-force clause." *Hill*, 832 F.3d at 138. Other courts have referred to subsection (B) as the "residual clause." *See, e.g., United States v. Dervishaj*, 2016 WL 1019357, at *2 (E.D.N.Y. Mar. 14, 2016).

According to the Supreme Court, "physical force" means "*violent force*" — "strong physical force" "capable of causing physical pain or injury to another person." *Johnson v. United States*, 559 U.S.133, 140 (2010) (emphasis in original).

18 U.S.C. § 1962 - Racketeering

Counts One and Two of the Indictment charged Jones with Racketeering and Racketeering Conspiracy, respectively. In pertinent part, Count One alleged that Jones:

knowingly and intentionally conducted and participated, directly or indirectly, in the conduct of the affairs of the [enterprise] through a pattern of racketeering activity, as that term is defined in [§§] 1961(1) and (5) . . .

(A-30).

In pertinent part, Count Two alleged that Jones:

Did knowingly and intentionally conspired to violated [§] 1962(c), that is to conduct and participate, directly or indirectly, in the conduct of the affairs of the [enterprise] through a pattern of racketeering activity, as that term is defined in [§§] 1961(1) and (5).

(A-35).

Count One charged 11 racketeering acts ("RA"). Jones was charged in only three: Conspiracy to Distribute Marijuana (RA One), Kidnapping (RA Two), and Attempted Murder (RA Three). Count Two, the RICO conspiracy, realleged these racketeering acts by reference to Count One.

As codified in 18 U.S.C. § 1962, the Racketeer Influenced and Corrupt Organizations Act ("RICO") provides for extended criminal penalties for acts performed as part of an ongoing criminal organization. RICO focuses specifically on patterns of racketeering. RICO is not intrinsically a crime of violence. It is particularly significant that § 1962 does not enumerate violations of specific federal or state statutes that constitute underlying crimes of violence; § 1961 does.

The Racketeering Acts

18 U.S.C. § 1961 – Definition of Racketeering Activity

To violate RICO, a person must engage in a pattern of racketeering activity connected to an enterprise. There are many ways that a person may violate the federal RICO statute. Section 1961 incorporates an expansive definition of "racketeering activity," listing some 67 wide-ranging predicate offenses, violent and non-violent, as constituting racketeering predicates. 18 U.S.C. §1961(1).

N.Y. Penal Law §135.20 – Kidnapping in the Second Degree

Racketeering Act Two charged Jones with kidnapping in violation of New York Penal Law § 135.20. The statute states:

A person is guilty of kidnapping in the second degree when he abducts another person.

N.Y. Penal Law § 135.20.

§§ 125.25 and 110 - Attempted Murder in the Second Degree

Racketeering Act Three charged Jones with attempted murder in violation of New York Penal Law §§ 125.25(1) and 110. Under § 125.25(1), a person is guilty of murder in the second degree when:

With intent to cause the death of another person, he causes the death of such person or of a third person . . .

N.Y. Penal Law 125.25(1).

Under New York law, a person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct that tends to effect the commission of such crime. N.Y. Penal Law § 110.

Arguably, two of the three racketeering acts – kidnapping and attempted murder – could qualify as crimes of violence. Nonetheless, as charged in this Indictment, they do not survive a categorical analysis. Neither kidnapping nor attempted murder requires nor necessarily involves physical force or risk of physical force. As charged in this Indictment, the key element of kidnapping is abduction, which can occur without force or risk of force. *Cf.* N.Y. Penal Law 135.25 (kidnapping in the first degree requires restraint, infliction of physical injury or sexual abuse or terrorizing a person.) One can abduct a person through

fraud or trickery without the consent of the individual being taken and without use of force or risk of force. For example, a person may be relocated to a secreted location without use of force or risk of force; a parent can abduct his/her own child without force or risk-of-force.

As charged in this Indictment, murder can be committed without use of force or risk of force (*e.g.*, using poison or carbon monoxide to sedate the victim). An attempt to commit such a murder does not require use of force or risk-of-force. For example, one can purchase and/or provide the poison to attempt a murder without use of force or risk of force.

Hence, as charged in this Indictment, neither the substantive nor inchoate crimes of kidnapping and attempted murder qualify as crimes of violence under either subsection (A) or subsection (B) of § 924(c)(3).

RICO Does Not Require Use or Risk of Violent Force

Racketeering under § 1962 categorically fails to qualify as a “crime of violence” under either § 924(c)'s force clause or risk-of-force clause since racketeering offenses can be committed without force. Section 1962 does not make reference to crimes of violence *but* makes unlawful “racketeering activity” and conspiring to engage in “racketeering activity.” Without more, § 1962 is not a statute “relating to a crime of violence.”

Since RICO fails to qualify as a “crime of violence” under the §924(c)(3)(A)

force clause, the remaining question is whether the offense can qualify as a “crime of violence” under the § 924(c)(3)(B) risk-of-force (*aka* residual) clause.

***Johnson II* and the Vagueness Doctrine**

In *Johnson II*, 135 S. Ct. 2551, the Supreme Court considered the constitutionality of a provision of the Armed Career Criminal Act (“ACCA”) that created a sentencing enhancement for possessing a firearm in the commission of a federal felony when the defendant already had three prior convictions for violent felonies and/or serious drug offenses. *Johnson II*, 135 S. Ct. at 2555; *see* 18 U.S.C. § 924(e)(1). Applying the categorical approach, the Supreme Court found the provision in issue, the “residual clause,” to be void for vagueness.

Johnson II made three changes to the vagueness doctrine:

First, *Johnson II* held that a law might be unconstitutionally vague even if there are some cases that could be easily resolved under the statutory language, rejecting previous findings that a statute was void for vagueness *only* if it was vague in all applications. 135 S. Ct. at 2560-61.

Second, *Johnson II* clarified that the vagueness doctrine applies not only to statutes that criminalize conduct but also to statutes that set punishments. “These principles apply not only to statutes defining elements of crimes, but also to statutes fixing sentences.” 135 S. Ct. at 2557.

Third, *Johnson II* suggested that the so-called categorical approach to

interpreting certain federal statutes raises particular vagueness problems.

In light of *Johnson II*, federal courts must now decide whether other federal laws that use the categorical approach are also void for vagueness.

***Johnson II* Applies Equally to This Case**

This Court and others have found that § 924(c)(3) is materially distinguishable from § 924(e)(2)(B) such that it is not unconstitutionally vague. *See Hill*, 832 F.3d 135; *Vasquez v. United States*, 2016 WL 3748504 (S.D.N.Y. July 11, 2016). However, those cases dealt with more discernible offenses. *Hill* concerned Hobbs Act robbery; *Vasquez* concerned narcotics distribution.

In *Hill*, 835 F.3d 135, this Court addressed the question whether Hobbs Act robbery is a “crime of violence within the meaning of 18 U.S.C. § 924(c). Determining that it is, the Court rejected the claim that Hobbs Act robbery fails to categorically constitute a crime of violence under § 924(c)(3)(A)’s “force” clause and rejected the claim that § 924(c)(3)(B)’s “risk-of-force” clause is void for vagueness under *Johnson II*. *Hill*, 835 F.3d at 138. As *Hill* observed, § 924(e)(2)(B)(ii) and § 924(c)(3)(B) are not identical. But the differences should have no impact on the constitutional analysis.

This appeal poses a similar issue with regard to application of the force and risk-of-force clauses to RICO. This Court’s finding that § 924(c)(3)(B) is not void for vagueness need not preclude a finding that RICO does not qualify as a crime of

violence under § 924(c)'s risk-of-force clause because RICO does not require a risk of force.

The logic of *Johnson II* extends to invalidate the risk-of-force clause of §924(c) when correlated to §1962(c) and (d), rendering the former unconstitutionally vague when applied to the latter. The risk-of-force clause cannot be used to support a conviction under § 924(c) in the present context.

Under the categorical approach, RICO is not a crime of violence within the meaning of 18 U.S.C. § 924(c). RICO fails to categorically constitute a crime of violence under either the force or risk-of-force clause; and when applied to RICO, the risk-of-force clause is void for vagueness. Further, the predicate acts charged in this Indictment also fail to qualify as crimes of violence under the categorical approach. Jones conviction and sentence on Count Twelve must be vacated.

(c) The Dean decision

REMAND SHOULD ALSO BE GRANTED IN LIGHT OF DEAN V. UNITED STATES, 137 S.CT. 1170, 197 L.ED.2D 490 (2017),

Petitioner also asks this Honorable Court to remand his case back to the Second Circuit, for it to consider the effect of Dean v. United States, 137 S.Ct. 1170 (2017), which held that a district court need not disregard the punishment on counts with mandatory minimum sentences when determining the punishment on other counts.

CONCLUSION

For the foregoing reasons the petition should be granted for a writ of certiorari should be granted.

The foregoing is true and correct under penalty of perjury.

Respectfully submitted,

 6/13/18
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