

No. 17-5476

IN THE SUPREME COURT OF THE UNITED STATES

OMAR ORLANDO RODRIGUEZ, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

NOEL J. FRANCISCO
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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Petitioner contends (Pet. 2-6) that the definition of the term "crime of violence" in 18 U.S.C. 16(b) is unconstitutionally vague and suggests that his petition be held pending this Court's decision in Sessions v. Dimaya, No. 15-1498 (reargued Oct. 2, 2017). In Dimaya, the Court is considering whether Section 16(b), as incorporated into the definition of the term "aggravated felony" in the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(43)(F), is unconstitutionally vague. Contrary to petitioner's suggestion, his petition should be denied.

Unlike in Dimaya, petitioner's vagueness claim arises in the context of the Sentencing Guidelines. See Pet. 3 (challenging the

"aggravated felony" enhancement under Sentencing Guidelines § 2L1.2(b)(1)(C) (2014), which is defined by reference to the INA's "aggravated felony" provision). That argument is foreclosed by this Court's decision in Beckles v. United States, 137 S. Ct. 886 (2017). In Beckles, the Court held that "the advisory Sentencing Guidelines are not subject to a vagueness challenge under the Due Process Clause." Id. at 895. The Court in Beckles thus rejected a vagueness challenge to a provision of the advisory Guidelines that was identical to the residual clause of the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(ii), which the Court had held to be unconstitutionally vague in Johnson v. United States, 135 S. Ct. 2551 (2015).

Because petitioner's claim is ultimately a vagueness challenge to a provision of the advisory Sentencing Guidelines, it is foreclosed by Beckles. The petition for a writ of certiorari therefore need not be held pending the Court's disposition of Dimaya, and should instead be denied.*

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

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