

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

In re: Motions Related to )  
Claims under Johnson v. United )  
States, \_\_\_ U.S. \_\_\_, )  
135 S. Ct. 2551 (2015) for )  
Defendants Whose Judgments are )  
Final )

**SUPPLEMENTAL ORDER**

On July 27, 2016, on behalf of the judges of the Middle District of North Carolina, this court entered an order entitled In re: Motions Related to Claims under Johnson v. United States, \_\_\_ U.S. \_\_\_, 135 S. Ct. 2551 (2015) for Defendants Whose Judgments are Final ("the Order"). The Order created a procedure for disposition of those cases potentially affected by the decision of the Supreme Court of the United States in Johnson. The Order created six categories of cases, including those cases identified in Exhibit 5 of the Order ("Exhibit 5"). Exhibit 5 cases raise claims related to Johnson and are defined as "[t]hose claims arising from a conviction under 18 U.S.C. § 924(c) in which the underlying offense was a crime of violence." The cases identified in Exhibit 5 are not presently subject to a stay order as are many of the other cases identified in the Order.

On September 29, 2016, the Supreme Court of the United States granted the government's petition for a writ of certiorari in Dimaya v. Lynch, 803 F.3d 1110 (9th Cir. 2015), cert. granted, No. 15-1498, 2016 WL 3232911 (U.S. Sept. 29, 2016). In Dimaya, the United States Court of Appeals for the Ninth Circuit applied Johnson and held that the residual clause defining a "crime of violence" in 18 U.S.C. § 16(b) as incorporated into 8 U.S.C. § 1101(a)(43)(F) is unconstitutionally vague as applied in immigration proceedings. Because the residual clause in 18 U.S.C. § 16(b) contains the same language as the residual clause in 18 U.S.C. § 924(c)(3)(B), it appears likely that the decision of the United States Supreme Court in Dimaya may be relevant to, or provide significant guidance in, deciding issues presented in claims raised under Johnson and 18 U.S.C. § 924(c).

As a result, this court finds that an order staying each of the cases identified in Exhibit 5 is appropriate. Those cases will be stayed pending the Supreme Court's decision in Dimaya. Accordingly, this court gives notice of its intention, sua sponte, to stay each of those cases identified in Exhibit 5 and to hold those cases in abeyance until such time as the Supreme Court of the United States issues its decision in Dimaya. Upon

issuance of the decision in Dimaya, this stay will be lifted and those cases will be resolved.

If either the United States or counsel for a defendant objects to the entry of a stay, a motion should be filed noting the objection and explaining the grounds for that objection. A response shall be filed to any such objection within seven days and, if no response is filed, the court will assume opposing counsel has no objection to the motion. After consideration of the pleadings, the assigned judge will then decide whether to lift the stay.

In each of these cases, an order entered by the assigned court shall control over the terms of this General Order and counsel should proceed in accordance with that order of the assigned court. Similarly, after entry of this order, an assigned judge may nevertheless determine that a case should proceed as to certain individual issues and, if so determined, the parties are to proceed in accordance with the orders of the assigned judge.

Except as modified herein, all other provisions of the order entered July 27, 2106 and entitled In re: Motions Related to Claims under Johnson v. United States, \_\_\_\_ U.S. \_\_\_\_, 135 S. Ct. 2551 (2015) for Defendants Whose Judgments are Final shall remain in full force and effect.

This the 8th day of November, 2016.

*William L. Osburn, Jr.*

---

Chief United States District Judge  
Middle District of North Carolina