

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

November 20, 2018

Lyle W. Cayce
Clerk

No. 17-60074

Summary Calendar

JOSE LUIS PINEDA, also known as Marcelo Pineda,

Petitioner

v.

MATTHEW G. WHITAKER, ACTING U.S. ATTORNEY GENERAL,

Respondent

Petitions for Review of an Order of the
Board of Immigration Appeals
BIA No. A090 965 802

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before BARKSDALE, OWEN, and SOUTHWICK, Circuit Judges.*

PER CURIAM:**

In *Pineda v. Sessions*, 709 F. App'x 315 (5th Cir. 2018), our court denied review of the Board of Immigration Appeals' decision upholding an order for

* Judge Edward Prado, a member of the original panel in this case, retired from the court on 2 April 2018, and, therefore, did not participate in this opinion. Judge Southwick was substituted for Judge Prado.

** Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

No. 17-60074

removal. As relevant here, our court held, pursuant to *United States v. Gonzalez-Longoria*, 831 F.3d 670 (5th Cir. 2016) (en banc), that 18 U.S.C. § 16(b), under which the immigration judge concluded Pineda had been convicted of a “crime of violence”, was not unconstitutionally vague. On 17 April 2018, however, the Supreme Court, in *Sessions v. Dimaya*, 584 U.S. ---, 138 S. Ct. 1204, 1216 (2018), held § 16(b) is unconstitutionally vague.

As a result, the Court, for the case at hand, granted *certiorari*, vacated, and remanded to our court “for further consideration in light of *Sessions v. Dimaya*”, with the judgment’s being entered on 2 November 2018. *Pineda v. Sessions*, No. 17-8655 (U.S. 1 October 2018).

Accordingly, this case is REMANDED to the Board of Immigration Appeals for further proceedings consistent with *Dimaya*.