

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 15-cv-00746-JLK

ELSADIG SAMI,

Plaintiff,

v.

LEON RODRIGUEZ, Director, U.S. Citizenship and Immigration Services, and
ANDREW LAMBRECHT, Field Office Director, U.S. Citizenship and Immigration Services,

Defendants.

ORDER ON MOTION TO DISMISS

Kane, J.

Before me is Defendant's Motion to Dismiss (Doc. 9). The only issue presented by this motion is whether Plaintiff's conviction of felonious restraint under Wyoming law qualifies as a "crime of violence" under 18 U.S.C. § 16(b). Doc. 9-1 at 1; Doc. 11 at 2. Less than two weeks before the motion was filed, the Supreme Court held in *Johnson v. United States* that the residual clause of 18 U.S.C. § 924(e)(2)(B), which is similar to 18 U.S.C. § 16(b), is unconstitutionally vague. 135 S. Ct. 2551, 2563 (2015). Defendants devote a brief footnote to discussing *Johnson*, Doc. 9-1 at 5 n.2, but Plaintiff's brief does not address *Johnson* at all.

Since the motion was fully briefed, several courts of appeal have held that 18 U.S.C. § 16(b) is also unconstitutionally vague after *Johnson*. See *United States v. Vivas-Ceja*, 808 F.3d 719, 723 (7th Cir. 2015); *Dimaya v. Lynch*, 803 F.3d 1110, 1120 (9th Cir. 2015); *United States v. Gonzalez-Longoria*, No. 15-40041, 2016 WL 537612, at *9 (5th Cir. Feb. 10, 2016), *ordered reheard en banc* by 2016 WL 766980 (5th Cir. Feb. 26, 2016); *but see United States v. Taylor*, No. 09-5517, 2016 WL 537444, at *32-35 (6th Cir. Feb. 11, 2016). In addition, the parties'

briefs analyze the question of whether felonious restraint is a crime of violence at least in part using analysis and case law that has been superseded by *Johnson*. See, e.g., Doc. 12 at 3 (citing *James v. United States*, 550 U.S. 192, 208 (2007)); *Johnson*, 135 S.Ct. at 2563 (overruling *James*). Accordingly, Defendants' Motion to Dismiss (Doc. 9) is **DENIED WITH LEAVE TO REFILE** on or before April 15, 2016. Should Defendants refile their motion, the parties should thoroughly and specifically address the impact of *Johnson* and the progenic courts of appeal cases referred to herein on 18 U.S.C. § 16(b) and on this case.

Dated: March 14, 2016

s/ *John L. Kane*
Senior U.S. District Judge