

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JA'QUAD DOMINIQUE MCDUFFIE,

Petitioner,

v.

CASE NO. 6:16-cv-1038-Orl-31DCI
(6:11-cr-402-Orl-31DCI)

UNITED STATES OF AMERICA,

Respondent.

ORDER

This cause is before the Court on Petitioner's Unopposed Motion to Continue Stay. (Doc. 22). The Court initially stayed these proceedings pending the Eleventh Circuit Court of Appeals' decision in *McKinley v. United States*, No. 16-16188 (granting a certificate of appealability on the issue of whether *Johnson v. United States*, 135 S. Ct. 2551 (2015) extends to the residual clause). (Doc. 17). The Court subsequently continued the stay of the proceedings in light of *Ovalles v. United States*, 889 F.3d 1259 (11th Cir. 2018) (granting rehearing en banc to determine (1) whether the risk of force clause in 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague in light of *Dimaya*; and (2) whether the court should overrule *United States v. McGuire*, 706 F.3d 1333, 1336-37 (11th Cir. 2013) (requiring courts to apply the categorical approach in determining whether an offense constitutes a crime of violence under § 924(c)(3)). (Doc. 19).

On October 4, 2018, the Eleventh Circuit held that the residual clause in 18 U.S.C. § 924(c)(3)(B) does not require application of the categorical approach and is not unconstitutionally vague. *Ovalles v. United States*, 905 F.3d 1231 (11th Cir. 2018). Similarly, the First and Second Circuits have held that § 924(c)'s residual clause is not unconstitutionally vague. See *United States v. Douglas*, 907 F.3d 1, 16 (1st Cir. 2018); *United States v. Barrett*, 903 F.3d 166, 178 (2d Cir. 2018). In contrast, the Fifth, Tenth, and D.C. Circuit Courts have held that, applying the categorical approach, the residual clause in § 924(c) is unconstitutionally vague. See *United States v. Davis*, 903 F.3d 483, 486 (5th Cir. 2018); *United States v. Eshetu*, 898 F.3d 36, 27 (D.C. Cir. 2018); *United States v. Salas*, 889 F.3d 681, 686 (10th Cir. 2018).

The Solicitor General has filed petitions for writ of certiorari with the Supreme Court of the United States in *Davis*, No. 18-431 (Oct. 3, 2018), and *Salas*, No. 18-428 (Oct. 3, 2018). Additionally, the Eleventh Circuit has stayed several cases involving § 924(c) pending the resolution of the petitions for writ of certiorari. See, e.g., *Enix v. United States*, No. 17-11716 (11th Cir. Oct. 31, 2018); *Soto-Martinez v. United States*, No. 18-10335 (11th Cir. Oct. 31, 2018); *Crawford v. United States*, No. 18-11040 (11th Cir. Oct. 29, 2018).

Petitioner's sole ground for relief is whether his conviction and sentence for a violation of 18 U.S.C. § 924(c)(1)(A) is improper because the residual clause in 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague. The Court concludes that the procedural posture of the case and the interests of justice warrant continuing the stay of the proceeding pending a decision by the Supreme Court of the United States.

Accordingly, it is **ORDERED** as follows:

1. Petitioner's Unopposed Motion to Continue Stay (Doc. 22) is **GRANTED**.

The stay of this case will continue pending the Supreme Court of the United States' decision regarding the petitions for writ of certiorari filed in *Davis* and *Salas*.

2. Petitioner shall file a motion to reopen this case or otherwise notify the Court within **FIFTEEN (15) DAYS** from issuance of a decision in these cases.

DONE AND ORDERED in Orlando, Florida, this 19th day of December, 2018.




GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

Copies to:
OrlP-3 12/19
Counsel of Record