

1 for a writ of certiorari, which was denied on November 17, 2003. See Evans-García v.
2 United States, 540 U.S. 1027 (2003).

3 **I. Legal Analysis and Discussion**

4 The Supreme Court in United States v. Davis, -- U.S. --, 139 S. Ct. 2319 (2019) struck
5 down the residual clause in 18 U.S.C. § 924(c)(3)(B)'s "crime of violence" definition as
6 unconstitutionally vague. Davis followed and relied on Johnson v. United States, 576 U.S.
7 591, 135 S. Ct. 2551 (2015), and Sessions v. Dimaya, -- U.S. --, 138 S. Ct. 1204 (2018), which
8 had invalidated similar residual clauses.¹

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10 Davis involved section 924(c)(3)(B)'s residual clause, which was identically worded
11 to that in Dimaya. Given Johnson and Dimaya, the Court stated that section 924(c)'s
12 residual clause would also be void for vagueness if the categorical approach applied to it.
13 However, if the clause permitted a conduct-based approach looking to the facts of the
14 specific case, it would be valid. Davis thus focused on whether section 924(c)(3)(b) *requires*
15 a categorical approach. Davis, 139 S. Ct. at 2327-33. The Court examined the text, context,
16 and history of section 924(c)(3)(B), noting its use of language like "offense" and "by its
17 nature" as well as its similarity and historical connection with the residual clause in section
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22 ¹ In Johnson, the Court struck down the Armed Career Criminal Act (ACCA)'s residual clause,
23 which, under the categorical approach, requires courts to determine the conduct involved in the
24 "ordinary case" of an offense and measure that against an indeterminate "serious" degree of risk. These
two features in combination made the clause impossible to apply and violated due process. Similarly,
Dimaya held that a straightforward application of Johnson invalidated section 16(b)'s residual clause,
because it implemented the same flawed "ordinary case" approach.

CASE NO. 17-1553 (GAG)

1 16(b). Id. At 2330-31. Based on those factors, the Court held that section 924(c)(3)(B)
2 requires the categorical approach and is therefore invalid.

3 Davis, the Court of Appeals for the First Circuit held that federal carjacking — the
4 putative predicate offense at issue here — is a “crime of violence” under the “force” clause
5 of 18 U.S.C. § 924(c)(3)(A). United States v. Cruz-Rivera, 904 F.3d 63, 66 (1st Cir. 2018).
6 Consequently, Evans’ conviction is a “crime of violence” under the force clause.
7 Defendant was not convicted or sentenced under section 924(c)(3)(B)’s residual clause, the
8 provision that Davis held invalid. Therefore, the Davis ruling is inapplicable to
9 Defendant’s sentence. Petitioner’s motion to vacate and correct his sentence under 28
10 U.S.C. § 2255. is **DENIED**.
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12 **SO ORDERED.**

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14 In San Juan, Puerto Rico this 3rd day of June 2021.

15
16 s/ Gustavo A. Gelpí
17 GUSTAVO A. GELPI
18 United States District Judge
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