
Court Strikes Portion Of Immigration and Naturalization Act as Void for Vagueness

17 Apr 2018

In one of Justice Scalia's last majority opinions before his death, the Court held that part of a federal law defining "violent crime" was unconstitutionally void for vagueness in *Johnson v. United States*, 576 U.S. --- (2015). The Immigration and Nationality Act similarly provided that a person could be deported for committing an "aggravated felony," which included a "crime of violence" as part of the definition. In this case, James Dimaya was convicted of California first degree burglary, and the Board of Immigration held that the offense was a "crime of violence" under the Act, thus subjecting him to removal, because an "ordinary case" of first degree burglary would likely include some measure of violence. The Ninth Circuit held that "crime of violence" was similarly vague as "violent crime" under *Johnson*, and so ruled it unconstitutional. The Court, in a fractured 5-4 opinion by Justice Kagan, affirmed, holding that the principle of *Johnson* had a straightforward application to the term "crime of violence" here, and thus it was void for vagueness. Justice Gorsuch, providing the necessary fifth vote, filed a concurrence stating his view that "vague laws invite arbitrary power," and that the void for vagueness doctrine is properly rooted in the fabric of the Constitution's Due Process Clause. Chief Justice Roberts, joined by Justices Kennedy, Thomas, and Alito, dissented, arguing that the issues that made "violent crime" problematically void in *Johnson* did not apply here. Justice Thomas, joined by Justices Kennedy and Alito, took a more philosophical approach, questioning whether the void for vagueness doctrine was constitutionally sound, and whether the Court could have properly upheld the statute by adopting a different test for determining whether a crime fit the definition.

A link to the decision in *Sessions v. Dimaya* is [here](#).

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