

SCOTUS Opinion: Court Strikes Down Violent Felony Residual Clause As Vague

24 Jun 2019

Under [18 U.S.C. sec. 924\(c\)\(3\)\(B\)](#), a defendant may receive a longer prison sentence for using a firearm in connection with a felony “that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” In prior cases, the Supreme Court struck down residual statutes like this one as being unconstitutionally vague, because the language provided no reliable way to determine which offenses qualified under the statute under a categorical analysis. In [United States v. Davis](#), the Fifth Circuit struck down this statute as being vague, and the government appealed, arguing that the Court should adopt a case-specific approach that took into account the defendant’s actual conduct in the predicate crime. The Court, in a 5-4 opinion by Justice Gorsuch, affirmed. Noting that “a vague law is no law at all,” the majority took the position that “when Congress passes a vague law, the role of courts under our Constitution is not to fashion a new, clearer law to take its place, but to treat the law as a nullity and invite Congress to try again.” The majority rejected the government’s invitation to save the law by looking at each case individually, holding that such an approach was not consistent with the language of the statute. Justice Kavanaugh, joined by Chief Justice Roberts and Justices Thomas and Alito, dissented, arguing that the residual clause had been used over the past 33 years to successfully combat violent crime, and to strike it down now was an “extraordinary” event. A link to the opinion is [here](#).

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