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Issue Brief: The Implications of *Dimaya v. Sessions*

Background on *Dimaya v. Sessions*

In April of 2018 the United States Supreme Court, in *Dimaya v. Sessions*, invalidated as unconstitutional **one of 80 removal grounds** within the Immigration and Nationality Act (INA)'s definition of aggravated felony. An "aggravated felony" is one among many categories of offenses that trigger deportation from or preclude entry to the U.S. These criminal grounds of removability are layered on top of the provisions of the INA that require deportation for those present without proper documentation. What makes the aggravated felony category different and particularly harsh is that it triggers *mandatory* detention and deportation in almost every case. The Court found in *Dimaya* that *one subpart* of one of the long list of aggravated felonies was unconstitutionally vague.

The term aggravated felony is defined in 8 USC § 1101, and in subparagraph (F) lists a "crime of violence" as defined in 18 USC § 16. In *Dimaya*, the Supreme Court invalidated one of two subparts of that cross-referenced statute, 18 USC §16(b), as void for vagueness. This decision does not address 18 USC §16(a), any other part of the definition of "aggravated felony" nor any other of the 52 removal grounds within the INA. The Supreme Court wisely struck down §16(b) which, due to its vagueness, has been exploited to effectuate deportations that defy fifth amendment protections in the Constitution.

The Implications of *Dimaya*

To be clear, *Dimaya* leaves intact both (1) all other aggravated felony grounds of removability, and (2) all other grounds of removal (including lack of status). However, by invalidating a subcategory within the "aggravated felony" grounds as unconstitutional, the Supreme Court makes clear that the government cannot act outside the bounds of the Constitution or settled law. Justice Gorsuch, appointed by Trump, joined the majority opinion in *Dimaya*. By again affirming that constitutional protections apply to those facing deportation, our highest court sends a strong message about government overreach, due process and the need for fairness within our immigration system.

Unpacking the Trump Administration Response

Immediately following the announcement of the *Dimaya* decision, Trump tweeted about the need to address legal "loopholes." However, the Supreme Court would disagree that our fundamental constitutional protections are legal "loopholes."

Trump has continued to paint all immigrants with a broad brush, no matter their connections to family, community or their dire need for safe haven. James Dimaya himself was a legal permanent resident who had lived in California for decades, but was convicted of an offense that the government argued was covered by 16(b).

Trump's anti-immigrant agenda girds the policies of his Administration, which have taken away protection from Temporary Protected Status (TPS) holders who cannot return to their countries; attempted to target immigrant youth by rescinding the Deferred Action for Childhood Arrivals (DACA) program; separated young children from their mothers as they come to the U.S. for humanitarian protections; and seek the mass detention and deportation of immigrants who are core to our neighborhoods and communities. The truth is at clear odds with the narrative Trump is selling: *Dimaya*, while an important victory for constitutional protections for immigrants with criminal convictions, does not limit the harshness and punitive nature of our immigration laws.

For a more talking points about *Dimaya* and the intersection of criminal and immigration law, click [here](#). For questions or more information, please contact Sameera Hafiz at shafiz@ilrc.org, Alisa Wellek at alisa@immdefense.org, or Paromita Shah at paromita@nipnl.org.