

2D CIR.

Kondjoua v. Barr

No. 16-296, 2d Cir. (May 28, 2020)

SUMMARY

Kondjoua v. Barr, 2d Cir. 2020. Immigration removal case: petitioner's Connecticut third-degree sexual assault conviction (CGS § 53a-72a(a)(1)) was initially deemed an aggravated felony crime of violence under 18 U.S.C. § 16(b), but after *Sessions v. Dimaya* invalidated § 16(b) as void for vagueness, the court declined to remand and instead held de novo that the conviction categorically qualifies as a crime of violence under § 16(a). The statute requires use of a dangerous instrument, actual physical force/violence, or superior physical strength—all of which constitute "violent force" capable of causing pain or injury under *Johnson* and *Stokeling*. Petition for review denied.

CASE DETAILS

COURT	2d Cir.
WRITING FOR THE COURT	HALL; LIVINGSTON; RESTANI
JURISDICTION	Federal
DECIDED	May 28, 2020
DOCKET	16-296
DISPOSITION	denied
PROCEDURAL POSTURE	Petition for review of a decision of the Board of Immigration Appeals affirming an Immigration Judge's removal order.
STANDARD OF REVIEW	De novo review of legal questions.
PRECEDENTIAL VALUE	published
PARTIES	Chrysostome Tsafack Kondjoua v. William P. Barr, United States Attorney General

TOPICS

immigration removal proceedings statutory interpretation standard of review administrative law

PRACTICE AREAS

Immigration Criminal Law

QUESTIONS PRESENTED

1. Whether Kondjoua's conviction for sexual assault in the third degree under Connecticut General Statutes § 53a-72a(a)(1) categorically qualifies as a crime of violence under 18 U.S.C. § 16(a) after the Supreme Court invalidated § 16(b) in *Sessions v. Dimaya*.

KEY QUOTATIONS

“The ordinary meaning of th[e] term [crime of violence], combined with § 16's emphasis on the use of physical force against another person (or the risk of having to use such force in committing a crime), suggests a category of violent, active crimes.” (at 7)

“the phrase 'physical force' means violent force—that is, force capable of causing physical pain or injury to another person.” (at 7)

“overpower[ing] a victim's will—even a feeble or weak-willed victim—necessarily involves a physical confrontation and struggle.” (at 11)

FACTUAL BACKGROUND

Kondjoua, a native and citizen of Cameroon, was admitted to the United States as a lawful permanent resident in 2010. In 2015, he was convicted, pursuant to a guilty plea, of sexual assault in the third degree in violation of Connecticut General Statutes § 53a-72a(a)(1) and sentenced to five years' imprisonment. Based on that conviction, the Department of Homeland Security charged him as removable for having committed an aggravated felony crime of violence.

PROCEDURAL HISTORY

The Immigration Judge found Kondjoua removable for having been convicted of an aggravated felony crime of violence under 18 U.S.C. § 16(b). The BIA affirmed. Subsequently, the Supreme Court in *Sessions v. Dimaya* held § 16(b) void for vagueness.

DISPOSITION

denied

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