U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: A[redacted], [redacted]

A[redacted]243

Date of this notice: 1/9/2018

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Creppy, Michael J.
Liebowitz, Ellen C
Mullane, Hugh G.

Userteam: Docket

File: [redacted] 243 – Los Angeles, CA Date: JAN – 9 2018

In re: [redacted]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Mario Acosta Jr., Esquire

APPLICATION: Cancellation of removal; remand

The respondent appeals the Immigration Judge's April 29, 2014, decision pretermitting her application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). During the pendency of this appeal, the respondent moved to remand proceedings in order to apply for adjustment of status under section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255, in conjunction with a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h) as a Petition for Alien Relative (Form I-130) filed by her United States citizen daughter has recently been approved. The Department of Homeland Security ("DHS") has not filed a brief on appeal and has not filed an opposition to the respondent's motion to remand. The appeal will be sustained, the record will be remanded, and the motion will be denied as moot.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge pretermitted the respondent's application for cancellation of removal, concluding that the respondent's conviction under Cal. Penal Code § 273a(b) ("§ 273a(b)") was a crime involving moral turpitude that precludes her from relief (IJ at 3). Specifically, the Immigration Judge held that § 273a(b) is categorically broader than the generic offense, and is a divisible statute (IJ at 1). The Immigration Judge then applied the modified categorical approach, examined the respondent's conviction record, and concluded that the respondent had been convicted of that portion of the offense that involves moral turpitude (IJ at 1-3). The respondent now appeals.

To determine whether a state criminal conviction is a crime involving moral turpitude, we must follow the "categorical approach" and compare the state statute of conviction, which in this case is the respondent's conviction under Cal. Penal Code § 273a(b), with the generic offense – here, a crime involving moral turpitude – to determine whether the state offense is a categorical match to the generic offense, such that every violation of that statute qualifies as a crime involving moral turpitude. *Matter of Silva-Trevino ("Silva-Trevino III")*, 26 I&N Dec. 826, 830-31 (BIA 2016) (applying the "categorical approach" and, if necessary, the "modified categorical approach" in determining whether a crime involves moral turpitude under the Act).

In 2010, the respondent was convicted of violating Cal. Penal Code § 273a(b). California Penal Code § 273a(b) provides:

> Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

In applying the categorical approach, we must first determine the definition of the generic offense. "The term 'moral turpitude' generally refers to conduct that is 'inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.'" *Matter of Silva-Trevino III*, 26 I&N Dec. at 833 (citation omitted). "To involve moral turpitude, a crime requires two essential elements: reprehensible conduct and a culpable mental state." *Id.* at 834.

We agree with the Immigration Judge that Cal. Penal Code § 273a(b) punishes a broader range of conduct than the generic definition of a crime involving moral turpitude. The minimum conduct that has a "realistic probability" of being prosecuted under § 273a(b) is contained in the fourth prong of the statute and involves willfully causing or permitting a child – in one's care or custody – to be placed in a situation where his or her person or health may be endangered.[1] *See Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007) ("to find that a state statute creates a crime outside the generic definition . . . requires a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside the generic definition of a crime."); *see also Matter of Silva-Trevino III*, 26 I&N Dec. at 832-33.

Although the fourth prong of the statute specifies a mens rea of "willful[ness]," the California Supreme Court has held that willfulness in this context only requires proof of criminal negligence. *See People v. Valdez*, 42 P.3d 511, 519-20 (Cal. 2002). We have held that "an assault statute prohibiting a perpetrator from causing injury to another 'with criminal negligence' does not define a crime involving moral turpitude." *Matter of Jing Wu*, 27 I&N Dec. 8, 11 (BIA 2017) (quoting *Matter of Perez-Contreras*, 20 I&N Dec. 615, 618-19 (BIA 1992)). Moreover, this portion of the statute "makes criminal conduct that creates only the bare potential for nonserious harm to a child. . . " *Fregozo v. Holder*, 576 F.3d 1030, 1038 (9th Cir. 2009) (holding, in the context of determining whether an offense fell within section 237(a)(2)(E)(i) of the Act, that the "full range of conduct" punished under § 273a(b) is broader than our definition of "crime of child abuse"). Criminally negligent conduct that "creates only the bare potential for nonserious harm to a child"

[1] In *People v. Little*, 9 Cal. Rptr. 3d 446 (Cal. Ct. App. 2004), the defendant was convicted under § 273a(b) for placing a child in a bed without railings or restraints, where she could have been injured from falling. *People v. Little*, 9 Cal. Rptr. 3d at 449-50. The court held that the act of placing the child in an unsecured bed, coupled with the unsanitary conditions inside the house, were sufficient to hold that the defendant allowed his child to be placed in a situation that posed a *potential* danger. *Id.*

does not constitute reprehensible conduct committed with a sufficiently high degree of mental culpability to constitute a crime involving moral turpitude. *See Matter of Solon*, 24 I&N Dec. 239, 242 (BIA 2007) ("a finding of moral turpitude involves an assessment of both the state of mind and the level of harm required to complete the offense [such that] intentional conduct resulting in a meaningful level of harm . . . may be considered morally turpitudinous [but] as the level of conscious behavior decreases, i.e., from intentional to reckless conduct, more serious resulting harm is required in order to find that the crime involves moral turpitude.").

As we agree that § 273a(b) criminalizes more conduct than the elements of the generic offense of a crime involving moral turpitude, we agree with the respondent that § 273a(b) is overbroad and thus is not categorically a crime involving moral turpitude. Turning to the issue of divisibility, although the Immigration Judge concluded that § 273a(b) is divisible and applied the modified categorical approach to the respondent's record of conviction when she last analyzed the statute in 2014 (IJ at 2-3), we must now examine whether § 273a(b) is divisible under current case law from the Supreme Court, the Ninth Circuit, and the Board.

When a statute is overbroad and thus not a categorical match to the generic offense, we next determine whether the state statute of conviction is "divisible" or "indivisible." *See Diego v. Sessions*, 857 F.3d at 1009; *see also Descamps v. United States*, 133 S. Ct. 2276, 2281, 2283 (2013). To determine whether a statute is divisible, we ask whether a statute contains alternative "elements" defining multiple crimes or alternative "means" by which a defendant might commit the same crime. *See Mathis v. United States*, 136 S. Ct. 2243, 2256 (2016); *see also Matter of Silva-Trevino III*, 26 I&N Dec. at 833. If the statute of conviction has an indivisible set of elements, it is "indivisible" and the modified categorical approach cannot be applied. *See Descamps v. United States*, 133 S. Ct. at 2282; *see also Matter of Chairez-Castrejon*, 26 I&N Dec. 819, 819-20 (BIA 2016) (holding that the divisibility analysis outlined in *Descamps* and *Mathis* "applies in immigration proceedings nationwide to the same extent that it applies in criminal sentencing proceedings").

To determine whether § 273a(b) is divisible, we first look to the text of the statute itself. The first part of the statutory text of § 273a(b) requires that the conduct be done "under circumstances or conditions other than those likely to produce great bodily harm or death." The second part of the statute outlines four prongs, phrased disjunctively, that present alternative ways in which a defendant can injure or endanger a child. Although the statute is phrased disjunctively, that does not automatically render the statute divisible. *See Mathis v. United States*, 136 S. Ct. at 2249. It is not clear on the face of the statute whether these four prongs outline alternative means of committing the offense or if they are alternative elements punishing different offenses.

We next look at "authoritative sources of state law" to determine whether the statute is divisible. *See Mathis v. United States*, 136 S. Ct. at 2256. To begin, we note that § 273a is divided into subsections (a) and (b). Subsection (a) is a felony and punishes four alternative scenarios that occur "under circumstances or conditions likely to produce great bodily harm or death." As noted above, subsection (b) is a misdemeanor and punishes four alternative scenarios that occur "under circumstances or conditions *other than those* likely to produce great bodily harm or death"

(emphasis added).[2] The language detailing the four alternative scenarios in both subsections (a) and (b) is identically worded. Due to the identical language of the relevant portions of both subsections, although this case only involves looking at subsection (b), in analyzing state case law to determine whether § 273a(b) is divisible, we also look to case law involving subsection (a).

California case law has determined that there are two distinct ways that an individual can violate the statute. First, an individual can violate the statute by "direct infliction," namely, by inflicting unjustifiable physical pain or mental suffering on a child. *See In re L.K.*, 132 Cal. Rptr. 3d 342, 346-47 (Cal. Ct. App. 2011) (analyzing subsection (a) of section 273a). The statute can also be violated by "indirect infliction," namely, by willfully causing or permitting any child to suffer; willfully causing or permitting the person or health of a child – in one's care or custody – to be injured; or willfully causing or permitting a child – in one's care or custody – to be placed in a situation where his or her person or health may be endangered. *Id.*

The California Supreme Court has determined that a violation of the "direct infliction" prong requires the state to prove general criminal intent, whereas a violation of the "indirect infliction" prongs only requires the state to prove criminal negligence. *See People v. Valdez*, 42 P.3d at 518-19. The three "indirect infliction" prongs of the statute fall outside of our definition of a crime involving moral turpitude, as they encompass offenses that can be committed by means of criminal negligence. *See Matter of Perez-Contreras*, 20 I&N Dec. at 619. Therefore, to determine whether the statute is divisible vis-à-vis our definition of a crime involving moral turpitude, we must determine whether the "direct infliction" and "indirect infliction" prongs are merely alternative means of violating the statute or whether they are separate elements of the offense that require jury unanimity in order for a conviction. *Mathis v. United States*, 136 S. Ct. at 2248.

In *Ramirez v. Lynch*, the Ninth Circuit examined whether a conviction under Cal. Penal Code § 273a(a) is categorically an aggravated felony crime of violence. *Ramirez v. Lynch*, 810 F.3d at 1127. In concluding that § 273a(a) is overbroad and indivisible, the court held that the four prongs of the statute were alternative means of committing a single offense, rather than alternative elements requiring jury unanimity. *See id.* at 1138. Although *Ramirez* dealt with a different inquiry than the one in the instant case, the court relied on two California Courts of Appeal cases that aid us in our analysis of the instant case.

[2] Subsections (a) and (b) qualify as distinct elements of the offense rather than as "brute facts," or mere means of commission as they contain different sentencing provisions affecting the degree of punishment. *See Matter of Chairez-Castrejon*, 26 I&N Dec. at 823; *see also Mathis v. United States*, 136 S. Ct. at 2256 ("If statutory alternatives carry different punishments, then under *Apprendi* [*v. New Jersey*, 530 U.S. 466 (2000),] they must be elements.").

In *People v. Vargas*, the California Court of Appeal held that where a case involves a continuous course of conduct,[3] "it is permissible for members of the jury to determine that the underlying facts establish a violation of the statute under different legal theories such as direct infliction of abuse or permitting the child's health or safety to be endangered." *People v. Vargas*, 251 Cal. Rptr. 904, 909 (Cal. Ct. App. 1988). In other words, the jury did not need to agree as to whether the defendant violated the prong of the statute punishing the direct infliction of physical pain or the prong of the statute punishing the indirect infliction of injury by willfully permitting her child to be injured, so long as the jury unanimously agreed that the defendant violated § 273a(a). *Id.*

Furthermore, in *In re L.K.*, the California Court of Appeal upheld the lower court's judgment, but on a different prong of § 273a(a). *In re L.K.*, 132 Cal. Rptr. 3d at 347. The trial court found that the defendant violated the "direct infliction" portion of the statute, but in so doing, applied the incorrect mental state of criminal negligence (as opposed to general intent). *Id.* at 346. The appellate court agreed with the defendant that the trial court had erred in concluding that her actions violated the "direct infliction" portion of the statute. *Id.* However, the appellate court still upheld the lower court's judgment, concluding that the defendant had violated the first prong of the statute, by willfully permitting her brother to suffer unjustifiable physical pain and mental suffering. *Id.* at 347. Thus, even though the trial court erred in finding that the defendant violated the "direct infliction" portion of the statute, the appellate court upheld the conviction under § 273a(a), concluding that the evidence supported a conviction under a different prong. *Id.*

These cases indicate that in order to sustain a conviction under § 273a(b), the state of California need not prove that a defendant violated a particular prong of the statute, so long as the jury agrees that the defendant violated one of the four prongs necessary for a conviction. *See generally In re L.K.*, 132 Cal. Rptr. 3d at 342; *People v. Vargas*, 251 Cal. Rptr. at 904. As such, the four prongs of § 273a(b) are merely alternative means of violating the statute that do not require jury unanimity, as opposed to separate elements. Therefore, after examining the authoritative sources of state law, we disagree with the Immigration Judge and hold that § 273a(b) is not divisible. As § 273a(b) is not a divisible statute, our analysis stops here, and we cannot apply the modified categorical approach to the instant case.

In sum, we conclude that § 273a(b) is broader than the generic offense of a crime involving moral turpitude and is not divisible; therefore, it is not a crime involving moral turpitude. As such, we will remand the record to the Immigration Judge to determine whether the respondent is

[3] Under California law, a jury verdict must be unanimous, and the jury must unanimously agree that a defendant is guilty of a specific crime. *People v. Russo*, 25 P.3d 641, 645 (Cal. 2001). An exception to the juror unanimity requirement exists for certain offenses, including § 273a, when the state alleges a pattern of abuse, or a "continuous course of conduct." *People v. Ewing*, 140 Cal. Rptr. 299, 300-01 (Cal. Ct. App. 1977). When a prosecutor alleges a "continuous course of conduct," the jury is required to unanimously decide whether the defendant was guilty of that course of conduct, as distinguished from whether the defendant committed a specific act on a specific date. *Id.*

otherwise eligible for cancellation of removal and to allow the respondent an opportunity to pursue her application for cancellation of removal.

In support of her request for remand, the respondent has submitted evidence which reflects that, on September 25, 2015, a visa petition filed on the respondent's behalf by her United States citizen daughter was approved by the U.S. Citizenship and Immigration Services ("USCIS"). As we are remanding proceedings for the reasons set forth above, on remand, the Immigration Judge may also consider the respondent's arguments relating to her eligibility for adjustment of status.[4] Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FURTHER ORDER: The motion to remand will be denied as moot.

FOR THE BOARD

[4] It is undisputed that the respondent is an arriving alien (Tr. at 23; Exhs 1, 2, 2A). The USCIS has exclusive jurisdiction over all adjustment of status applications for arriving aliens with limited exceptions detailed in 8 C.F.R. § 1245.2(a)(1)(ii). On remand, the Immigration Judge should determine whether the respondent falls within the exception detailed at 8 C.F.R. §§ 1245.2(a)(1)(ii)(A)-(D). *See Matter of Silitonga*, 25 I&N Dec. 89 (BIA 2009) (an Immigration Judge does not have jurisdiction to adjudicate an application filed by an arriving alien seeking adjustment of status, with the limited exception of an alien who has been placed in removal proceedings after returning to the United States pursuant to a grant of advance parole to pursue a previously filed application).

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LOS ANGELES, CA

IN THE MATTER OF:

I[redacted] A[redacted]

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CASE NO. A[redacted] 243

IN REMOVAL PROCEEDINGS

ON BEHALF OF THE RESPONDENT:
Mario Acosta, Esq.

ON BEHALF OF THE DHS:
DHS

DECISION AND ORDER OF THE IMMIGRATION JUDGE

There is not a contested issue of removability in this case. The issue is whether or not respondent is eligible for 42B Cancellation of Removal based upon her convictions. Respondent filed 2 briefs with a request for extension of time to file the briefs which was granted. DHS did not file a brief in this case.

The question is whether respondent is eligible for having been convicted under Section 273a(b)of the California Penal Code which states:

> Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

Section 273a(b) is a devisable statute because the offense may be committed by causing physical pain or mental suffering, or willfully cause or permits the person or health of the child to be injured or willfully causes or permits the child to be placed in a situation where his or her person or health may be endangered. The duplicity of the means of committing the offense makes it divisable , therefore, the modified categorical approach applies in this case.

Under *Descamps v. United States*, 133 S. Ct. 2276 (2013)the Supreme Court held that where a state statue is overbroad in terms of missing an element of a generic offense, the

modified categorical approach does not apply. The Supreme Court further held that it is appropriate to look to judicially noticeable documents only where the State statute at issue is divisible, that is when it has multiple, alternative elements, and the court is attempting to determine the set of elements to which the defendant pleaded guilty. Respondent's interpretation of *Descamps* is completely misinterpreted as is respondent's claim that *Moncrieffe v. Holder, 133 S.Ct. 1678 (2013)* overturned *Young v. Holder*, 697 F.3d 976 (9th Cir. 2012 *en banc*). In *Moncrieffe* the Supreme Court ruled that in removability phase of the case DHS has the burden of establishing a conviction is a grounds of removability under the categorical or modified categorical approach.. In the *Young v. Holder* decision the Ninth Circuit held that it was the respondent's burdern to establish eligibility for relief by providing judicially noticeable documents. The burden in the relief phase of an immigration hearing does shift to the respondent in *Young* .Section 273a(b) is not over broad, it is divisible.

Respondent argues in her brief that that her convictions are not CIMT's and do not fall under *Fregozo v. Holder*, 567 F.3d 1030 (9th Cir. 2009) as a conviction for child endangerment. This Court would agree. *Fregozo v. Holder* is not on point. In *Fregozo* a police report was used to determine whether the conviction constituted a crime within the meaning of the Act. The Ninth Circuit held that the police report was not a judicially noticeable document under these facts. In respondent's case the misdemeanor complaint, a judicially noticeable document has been filed with this Court from the criminal case which has two counts:

COUNT 1

On or about March 17, 2010 in the County of Los Angeles, the crime of CRUELTY TO CHILD BY INFLICTING INJURY, in violation of PENAL CODE SECTION 273A(B), A Misdemeanor, was committed by [redacted] A[redacted], who did, under circumstances and conditions othere than those likely to produce great bodily harm and death, willfully and unlawfully inflict on [redacted] a child of 12 YEARS OLD years, unjustifiable physical pain and mental suffering and injure, cause and permit said child to suffer.

COUNT 2

On or between November 1, 2009 and January 31, 2010 , the crime of CRUELTY TO CHILD BY INFLICTING INJURY, in violation of PENAL CODE SECTION 273A(B), A Misdemeanor, was committed by [redacted] A[redacted], who did, under circumstances and conditions othere than those likely to produce great bodily harm and death, willfully and unlawfully inflict on [redacted], a child of 15 YEARS OLD years, unjustifiable physical pain and mental suffering and injure, cause and permit said child to suffer.

This is a judicially noticeable document which spells out the acts respondent committed and what she was found guilty of. *United States v. Snellenberger*, 548 F.3d 699, 701 (9th Cir. 2008) (en banc) (per curiam).

A crime involving moral turpitude(CIMT) is either one that involves fraud or one that involves grave acts of baseness or depravity, such that its commission "offends the more fundamental values of society." Navarro-Lopez v. Gonzales, 503 F.3d 1063, 1074-75 (9th Cir.

2007). That an offense contravening societal duties is not enough to make it a crime involving moral turpitude; otherwise, every crime would involve moral turpitude. *Robles_Urrea v. Holder*, 678 F.3d 702 (9th Cir. April 23, 2012)

In respondent's case she willfully and unlawfully inflicted physical pain and mental suffering and injury causing and permitting said children to suffer on March 17, 2010 and on or about or between November 1,2009 and January 31, 2010. These offenses are grave acts of baseness or depravity and these acts offend the more fundamental values of society. They both constitute to be crimes involving moral turpitude (CIMT). A alien commits one or more CIMT's when s he commits such an act, even though one may closely follow the other, be similar in character, and even be part of an overall plan of criminal misconduct. Pacheco V. INS , 546 F.2d 448 (1st Cir. 1976), cert. denied 430 U.S. 985 (1977), "a scheme, to be a single scheme, must take place at one time; there must be no substantial interruption that would allow the participant to disassociate himself from his enterprise and reflect on what he has done." Id. at 451. Iredia v. INS, 981 F.2d 847, 848 (5th Cir. 1993).

Respondent has two CIMT convictions and she is ,therefore, ineligible for Cancellation of Removal. Her application for 42B is pretermitted and denied.

Respondent did not apply for any other form of relief including voluntary departure. Despite the fact that she has not applied for voluntary departure, this court will consider respondent's case for this form of relief. Based upon respondent's 42B application, she has been residing in the United States since 2003 when she crossed the border illegally. Respondent left the United States two times, in 2005. She is single. She was previously married to Jose Amezcua Osegera in 2001 in Los Angeles. Respondent has 3 United States Citizen children born in 1997, 2002 and 2008. Respondent has worked in the United States as a housekeeper at hotels and makes $400 a week. Respondent's mother continues to live in Mexico. These are all of the positive factors in respondent's case.

The negative factors are the respondents convictions; however, she was only sentenced to 30 days jail, community service, enrollment in Parenting Skills program and fined. These crimes occurred in 2010. This court is unaware of any other criminal history.

Section 244(e) of the INA provides that the Attorney General may permit an alien to depart the United States at his own expense, in lieu of removal, if the following requirements are met: a person of good moral character for at least five years immediately preceding his application for voluntary departure. In order to receive the privilege of voluntary departure, an alien bears the burden of establishing both that he is eligible for this form of relief under the foregoing criteria and that he merits a favorable exercise of discretion. Matter of Gamboa, 14 I&N Dec. 244, 248 (BIA 1972).

In exercising discretion on an application for voluntary departure, the Court may take into account many factors, including the alien's prior immigration history, the nature of his entry or entries (whether as a smuggled alien or without inspection), and legal violations. Id. The alien

may overcome such adverse factors through compensating, positive factors, such as long residence in the United States, close family ties in the United States, or humanitarian needs. Id. As the Board of Immigration Appeals has held in other contexts, discretionary determinations require the Court to balance the positive and negative factors. Matter of Marin, 16 I&N Dec. 581, 584 (BIA 1978) abrogated on other grounds by Matter of Edwards, 20 I&N Dec. 191 (BIA 1990). Other examples of positive factors may include: evidence of hardship to the respondent and his family should he be removed; service in the Armed Forces; a history of employment; the existence of property or business ties; the existence of worthwhile community service; proof of genuine rehabilitation if a criminal record exists; and evidence attesting to the respondent's good moral character. Id. at 584–85. Negative factors the Court may consider also include: the nature and underlying circumstances of the ground leading to removal; the presence of significant violations of immigration laws; the existence of a criminal record; and other evidence indicative of the respondent's bad character. Id.

In looking at her misdemeanor complaints respondent was involved in harming her 15 year old child from two additional days or for over 2 months and her younger daughter for one incident. It is the nature of these convictions and the alleged mistreatment of these children described in the misdemeanor complaints where this court finds respondent is not deserving of voluntary departure as a matter of discretion and voluntary departure is denied.

ORDER

IT IS THE ORDER of this Court that application for Cancellation of Removal under 42B is DENIED.

IT IS THE FURTHER ORDER of this Court that Voluntary Departure is DENIED as a matter of discretion.

IT IS THE FURTHER ORDER of this Court that respondent is ordered Deported and Removed from the United States to Mexico.

WARNING

IT IS FURTHER ORDERED that if Respondent(s) fail(s) to depart pursuant to this removal order, there are civil and criminal penalties for his/her/their failure to depart the United States per this order under §§243 and 274D of the Act as stated by theses sections:

If the respondent(s) fail or refused to depart the United States within 90 days from the date of this final order of removal; or fails or refuse to obtain travel documents for departure; prevent or hamper his/her/their departure; or fail or refuse to present himself/herself/themselves for removal by US Government Officials the respondent(s) will be subject to 4 to 10 years imprisonment. Moreover, the respondent(s) will be subject to a civil penalty of not more than $500 for any of the above referenced violations.

4/29/14
Date

D.D. SITGRAVES
Immigration Judge