



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 20530

**Finn, Gary, Esq.  
Law Office of Gary Finn  
82632 Highway 111, Suite B2  
Indio, CA 92001**

**DHS/ICE Office of Chief Counsel - IMP  
1115 N. Imperial Ave.  
El Centro, CA 92243**

**Name: GALVEZ VALDOVINOS, RAUL**

**A 090-066-373**

**Date of this notice: 11/21/2014**

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.

Userteam: Docket

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*257*



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**GALVEZ VALDOVINOS, RAUL  
P.O. BOX 1143  
MECCA, CA 92254**

**DHS/ICE Office of Chief Counsel - IMP  
1115 N. Imperial Ave.  
El Centro, CA 92243**

**Name: GALVEZ VALDOVINOS, RAUL**

**A 090-066-373**

**Date of this notice: 11/21/2014**

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Creppy, Michael J.

Userteam:

Falls Church, Virginia 20530

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File: A090 066 373 – Imperial, CA

Date: **NOV 21 2014**

In re: RAUL GALVEZ VALDOVINOS a.k.a. Raul Galvez

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Gary Finn, Esquire

ON BEHALF OF DHS: William P. Hollerich  
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(2)(A)(i)(II), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(II)] -  
Controlled substance violation

APPLICATION: Termination

The Department of Homeland Security (“DHS”) appeals from the Immigration Judge’s December 14, 2012, decision terminating the respondent’s removal proceedings. The respondent, a native and citizen of Mexico and lawful permanent resident of the United States, opposes the appeal. The appeal will be dismissed.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

We adopt and affirm the Immigration Judge’s decision terminating the respondent’s removal proceedings. The respondent was charged with being removable as an alien convicted of a controlled substance violation as a result of a 1999 conviction for possession of a controlled substance in violation of section 11377 of the California Health and Safety Code. In that case, the respondent received a deferred entry of judgment, and the case was dismissed on June 12, 2000, after he successfully completed the required diversion program (I.J. at 1).

The DHS contends on appeal that the respondent’s 1999 offense resulted in a conviction under section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A). The DHS asserts that the decision of the United States Court of Appeals for the Ninth Circuit in *Lujan-Armendariz v. INS*, 222 F.3d 728, 749 (9th Cir. 2000), which provides to the contrary, does not apply in this case because it was overruled by *Nunez-Reyes v. Holder*, 646 F.3d 684,

690 (9th Cir. 2011) (en banc).<sup>1</sup> On its face, however, *Nunez-Reyes v. Holder*, only overrules *Lujan-Armendariz* prospectively (I.J. at 2). *Nunez-Reyes v. Holder*, *supra*, at 693-94; *see also Lopez-Vasquez v. Holder*, *supra*, at 1075 (recognizing that *Nunez-Reyes* applies “only prospectively”). Accordingly, “we must still evaluate convictions entered by a state court before July 14, 2011, under *Lujan-Armendariz*’s framework.” *Lopez-Vasquez v. Holder*, *supra*, at 1075. In light of this plain language, we are not persuaded by DHS’s assertion that *Lujan-Armendariz* does not apply here because it was decided after the respondent’s case was adjudicated and thus the respondent could not have relied it. The appeal will be dismissed.

ORDER: The DHS’s appeal is dismissed.

  
FOR THE BOARD

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<sup>1</sup> In *Lujan-Armendariz*, the Ninth Circuit extended the immigration benefits of the Federal First Offender Act (“FFOA”) to individuals with expunged state court convictions for first-time simple possession drug offenses where the offenders would have been eligible for relief under the FFOA had their offenses been prosecuted as federal crimes. *Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1074-75 (9th Cir. 2013). The FFOA permits a federal court to put first-time drug offenders who are convicted of the federal simple possession statute on pre-judgment probation. If the defendants successfully complete probation, the court must discharge them without entering a judgment of conviction. *Id.* Such a disposition does not constitute a conviction under the Act. *Id.*

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
2409 LA BRUCHERIE ROAD  
IMPERIAL, CA 92251

LAW OFFICE OF GARY FINN  
GARY FINN, ESQ.  
82632 HWY 111, STE B-2  
INDIO, CA 92201

Date: Dec 18, 2012

File A090-066-373

In the Matter of:  
GALVEZ VALDOVINOS, RAUL

\_\_\_\_ Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before \_\_\_\_\_. The appeal must be accompanied by proof of paid fee (\$110.00).

\_\_\_\_ Enclosed is a copy of the oral decision.

\_\_\_\_ Enclosed is a transcript of the testimony of record.

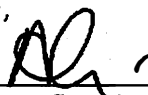
\_\_\_\_ You are granted until \_\_\_\_\_ to submit a brief to this office in support of your appeal.

\_\_\_\_ Opposing counsel is granted until \_\_\_\_\_ to submit a brief in opposition to the appeal.

✓ \_\_\_\_ Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,

  
\_\_\_\_\_  
Immigration Court Clerk

UL

cc: DISTRICT COUNSEL  
1115 N IMPERIAL AVE  
EL CENTRO, CA 922430000

Immigrant & Refugee Appellate Center | www.irac.net

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
IMPERIAL, CALIFORNIA**

**FILE NO** 090 066 373

**IN THE MATTER OF:**

Raul GALVEZ Valdovinos  
Respondent

**IN REMOVAL PROCEEDINGS**

**December 14, 2012**

**APPLICATION:** Motion to Terminate

**On Behalf of Respondent**

Gary Finn  
82632 Highway 111, Suite B-2  
Indio, CA 90014

**On Behalf of the Government**

William Hollerich  
11115 N. Imperial Ave.  
El Centro, CA 92243

**DECISION AND ORDER GRANTING MOTION TO TERMINATE**

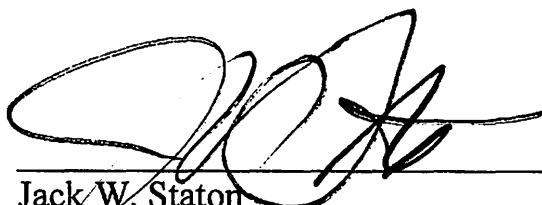
On October 6, 2011, the Department of Homeland Security began these removal proceedings with the filing of a Notice to Appear dated September 28, 2011. This notice to appear superseded a Notice to Appear issued July 25, 2011. In the filed Notice to Appear, DHS charged that the respondent is removable for having been convicted in January 1999 of a controlled substance offense relating to the possession of methamphetamine, in violation of § 11377 of the California Health and Safety Code. The respondent moved to terminate the proceedings because he was granted a deferred entry of judgment under § 1000 of the California Penal Code. The respondent's case was dismissed on June 12, 2000, after he successfully completed the requirements of the diversion statute.

The parties do not dispute the above rendition of the facts of the case. They simply disagree about the applicability of Lujan-Armendariz v. INS, 222 F.3d 728 (9th Cir.2000). That case held that convictions in state court are not convictions under the Immigration Act if they would qualify for relief under the Federal First

Offender Act had they been tried in federal court. Recently, the circuit court retreated from this view and overruled Lujan-Armendariz, *supra*, but only prospectively, not retroactively. Nunez-Reyes v. Holder, 646 F.3d 684 (9<sup>th</sup> Cir. 2011). In doing so, the circuit court noted: "For those aliens convicted before the publication date of this decision, Lujan-Armendariz applies. For those aliens convicted after the publication date of this decision, Lujan-Armendariz is." In my view, this established a bright line distinction. Since the respondent was convicted before the publication of Nunez-Reyes, he gets the benefit of the rule in Lujan-Armendariz. His possession offense would have been subject to the benefits of the Federal First Offender Act. Hence, it is not a removable offense.

DHS argues that the respondent could not have been influenced by the rule in Lujan-Armendariz because his plea and diversion ante-dated that decision. However, no case has been cited that would indicate that Lujan-Armendariz required any inquiry into the date of conviction to determine applicability of the Federal First Offender Act.

**IT IS THEREFORE ORDERED** that this be, and hereby is **DISMISSED AND TERMINATED**.



Jack W. Staton  
Immigration Judge  
December 14, 2012