



**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

Hartzler, Kara  
2485 Island Ave  
San Diego, CA 92102

DHS/ICE Office of Chief Counsel - EAZ  
P.O. Box 25158  
Phoenix, AZ 85002

Name: OLIVAS-MOTTA, MANUEL JESUS      A 021-179-705

Date of this notice: 2/21/2014

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:  
Liebowitz, Ellen C  
Guendelsberger, John  
Malphrus, Garry D.

schwarzA  
Userteam: Docket

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Falls Church, Virginia 20530

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File: A021 179 705 – Eloy, AZ

Date: FEB 21 2014

In re: MANUEL JESUS OLIVAS-MOTTA a.k.a. Manuel Jesus Olivas-Notta

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Kara Hartzler, Esquire

ON BEHALF OF DHS: Jennifer M. Wiles  
Senior Attorney

CHARGE:

Notice: Sec. 237(a)(2)(A)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(ii)] -  
Convicted of two or more crimes involving moral turpitude

APPLICATION: Termination

This case is presently before us pursuant to a May 17, 2013, decision of the United States Court of Appeals for the Ninth Circuit, which granted the respondent's petition for review from the Board's decision of August 9, 2010, and remanded for further proceedings. *See Olivas-Motta v. Holder*, 716 F.3d 1199 (9th Cir. 2013). For the reasons set forth below, the appeal is dismissed.

In the Board's August 9, 2010, decision, we dismissed the respondent's appeal from an Immigration Judge's April 8, 2010, decision, finding the respondent was removable as an alien convicted of two or more crimes involving moral turpitude (CIMT) under section 237(a)(2)(A)(ii) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1227(a)(2)(A)(ii), and denying his application for cancellation of removal. The respondent did not dispute that his conviction for facilitation, in violation of Arizona Revised Statute (ARS) § 13-1004, 3405(B)(6) (Exh. 4-C) was a CIMT (Exh. 4). The respondent disputes the Immigration Judge's determination that his conviction for endangerment, in violation of ARS § 13-1201 (Exh. 4-D), is a CIMT. The conviction records show that the respondent pled guilty to endangerment by recklessly endangering another person with a substantial risk of imminent death (Exh. 4-D). The Ninth Circuit held that the Immigration Judge and the Board improperly considered evidence beyond the record of conviction in holding that the respondent's conviction for endangerment was for a CIMT, and remanded the record for further proceedings.

The respondent requests that proceedings be terminated since his endangerment conviction was improperly found to have been a CIMT conviction, and he is thus not removable as an alien convicted of two or more CIMTs. The Department of Homeland Security (the "DHS") requests that the Board still find the respondent removable for committing two CIMTs because during the pendency of the respondent's appeal, the Board issued a decision, *Matter of Leal*, 26 I&N Dec. 20, 27 (BIA 2012), which held that recklessly endangering another person with substantial

risk of imminent death in violation of ARS § 1201(A) is categorically a CIMT. Thus, according to the DHS, the respondent's conviction for endangerment is categorically a CIMT pursuant to *Matter of Leal*.

The Ninth Circuit noted that the DHS did not request a remand to allow the Board to apply *Matter of Leal*. *Olivas-Motta v. Holder, supra*, at 1209. The Court held that it could not deny the respondent's petition based on a conclusion reached by the Board in a separate case, i.e., *Matter of Leal*, decided two years after it decided the appeal currently before it. *Id.* It noted that in the current case, the Board had not decided the respondent's appeal based on a conclusion that the Arizona endangerment statute was categorically a CIMT, and in fact, had specifically held that the Arizona endangerment statute was not a CIMT. *Id.*

The respondent asserts that the Ninth Circuit's language proscribed the Board from applying *Matter of Leal* to his case. However, we disagree. The Ninth Circuit did not limit its remand in a way that prevents us from applying *Matter of Leal* to his case. In discussing *Matter of Leal*, the Ninth Circuit's focus was on whether it would apply *Matter of Leal* to the respondent's case, especially where the Board had not determined that the respondent's conviction for endangerment was categorically a CIMT. *Olivas-Motta v. Holder, supra*, at 1209. It is true that the Ninth Circuit noted that the DHS had not requested a remand to allow the Board to apply *Matter of Leal*. *Id.* However, this is not the same as saying the Board is now prohibited from applying *Matter of Leal* to the respondent's case. The respondent's case was remanded from the Court with no specific directions or limitations regarding applying *Matter of Leal*. The respondent is still charged with being removable as an alien convicted of two or more CIMTs. It is true that when the case was before us in August 2010, we stated of the respondent's endangerment conviction, "[w]e cannot conclude that the offense is categorically a crime involving moral turpitude....." However, this does not mean that we cannot reconsider our decision in light of *Matter of Leal*, a precedent decision issued after our original decision in the respondent's case.

Under A.R.S. § 13-1201(A), a person commits endangerment by recklessly endangering another person with a substantial risk of imminent death or physical injury. Under A.R.S. § 13-1201(B), endangerment involving a substantial risk of imminent death is a class 6 felony, and in all other cases, it is a class 1 misdemeanor. Inasmuch as the respondent's conviction for endangerment was a Class 6 felony, it follows that his conviction was for recklessly endangering another person with a substantial risk of imminent death under A.R.S. § 13-1201. We agree with the Immigration Judge's finding that the respondent's conviction for endangerment is a CIMT, and that he is thus removable as having been convicted of two or more CIMTs (I.J. at 5-6). As noted, we have issued a precedent decision on this matter in which we determined that the offense of "recklessly endangering another person with a substantial risk of imminent death" in violation of A.R.S. § 13-1201 is categorically a crime involving moral turpitude. *See Matter of Leal, supra*.

Accordingly, the following order is entered.

ORDER: The appeal is dismissed.

  
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FOR THE BOARD