



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: GONZALEZ, RAUL**

**A 092-143-856**

**Date of this notice: 2/2/2018**

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:  
Guendelsberger, John  
Kendall Clark, Molly  
Grant, Edward R.

User team: Docket

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Falls Church, Virginia 22041

File: A092 143 856 – Los Angeles, CA

Date: FEB - 2 2018

In re: Raul GONZALEZ a.k.a. Raul Gonzalez-Ibarra

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Miguel A. Olano, Esquire

APPLICATION: Reopening; termination

The Board entered the final administrative decision on July 16, 2014, when we dismissed the respondent's appeal of the Immigration Judge's decision denying his applications for asylum, withholding of removal, and protection under the United Nations Convention Against Torture, and ordering him removed to Mexico. The lawful permanent resident respondent was found removable under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), based on his February 22, 2010, cocaine possession conviction in violation of Cal. Health & Safety Code § 11350. The respondent has now filed a motion to reopen and terminate, based on a May 22, 2017, state court order reducing the conviction to a misdemeanor.

The evidence reflects that the respondent's conviction is amended under Cal. Penal Code § 1170.18(G) to a simple drug possession misdemeanor on February 22, 2010, in violation of Cal. Health & Safety Code § 11350(a). *Matter of Cota-Vargas*, 23 I&N Dec. 849 (BIA 2005) (recognizing that the Board gives full faith and credit to a trial court's nunc pro tunc modification of an alien's conviction irrespective of the reasons for the modification). Further, the respondent seeks termination of the proceedings, because his first time simple drug possession conviction is subject to then-applicable rehabilitative expungement exception, given that Federal First Offender Act ("FFOA") relief would have been available for a similar federal conviction at the time. See *Lujan-Armendariz v. INS*, 646 F.3d 684 (9th Cir. 2011).<sup>1</sup> The Department of Homeland Security has not responded to the motion. 8 C.F.R. § 1003.2(g)(3). Under the circumstances, we will sua sponte grant the respondent's motion. 8 C.F.R. § 1003.2(a).

ORDER: The motion is granted and the proceedings are terminated without prejudice.

  
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FOR THE BOARD

<sup>1</sup> The United States Court of Appeals for the Ninth Circuit has since abandoned, prospectively, its precedents regarding expungements of drug convictions analogous to the FFOA. See *Nunez-Reyes v. Holder*, 646 F.3d 684 (9th Cir. 2011).