



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: POURMAND, EMMANUEL

A 212-062-570

Date of this notice: 6/18/2018

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:
Pauley, Roger

User team: Docket

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JS

Falls Church, Virginia 22041

File: A212 062 570 – San Francisco, CA

Date: JUN 18 2018

In re: Emmanuel POURMAND a.k.a. Emmanuel Purmand

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Monica N. Ganjoo, Esquire

ON BEHALF OF DHS: Jonathan H. Yu
Assistant Chief Counsel

APPLICATION: Termination

The Department of Homeland Security (“DHS”) has appealed from the Immigration Judge’s decision dated January 10, 2018. In that decision, the Immigration Judge determined that the respondent’s June 1, 2010, conviction for vehicular manslaughter with gross negligence in violation of California Penal Code § 192(c)(1) is categorically not a crime involving moral turpitude. The Immigration Judge determined that gross negligence is an insufficiently culpable mental state. For the following reasons, the DHS’s appeal will be dismissed.

To determine whether the respondent’s offense is a crime involving moral turpitude, we employ a categorical approach. This approach “compar[es] the elements of the state offense to those of the generic [definition of a crime involving moral turpitude] to determine if there is a categorical match.” *Escobar v. Lynch*, 846 F.3d 1019, 1024 (9th Cir. 2017) (citations omitted). The categorical approach “requires us to focus on the minimum conduct that has a realistic probability of being prosecuted under the statute of conviction, rather than on the facts underlying the respondent’s particular violation of that statute.” *Matter of Silva-Trevino III*, 26 I&N Dec. 826, 831 (BIA 2016); *see also Escobar v. Lynch*, 846 F.3d at 1024. We apply the categorical approach de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

We have held that moral turpitude is necessarily involved in crimes combining serious misconduct with at least a culpable mental state of recklessness, which is to say “a conscious disregard of a substantial and unjustifiable risk.” *Matter of Franklin*, 20 I&N Dec. 867, 870 (BIA 1994), *pet. for rev. denied*, *Franklin v. INS*, 72 F.3d 571 (8th Cir. 1995); *see also Matter of Wu*, 27 I&N Dec. 8, 15-16 (BIA 2017). Correspondingly, we have long held – and recently reaffirmed – that crimes committed with gross or criminal negligence lack a sufficiently culpable mental state. *See Matter of Tavdidishvili*, 27 I&N Dec. 142 (BIA 2017); *Matter of Perez-Contreras*, 20 I&N Dec. 615 (BIA 1992); *Matter of C-*, 2 I&N Dec. 719, 720 (BIA 1947) (“If the statute is so broad that it covers gross negligence, we think that the offense cannot be regarded as inherently base, vile or depraved.”).

In *Matter of Perez-Contreras*, we held that assault committed with criminal negligence does not involve moral turpitude. Under the Washington law at issue in that case, criminal negligence

Cite as: Emmanuel Pourmand, A212 062 570 (BIA June 18, 2018)

existed “when the perpetrator ‘fails to be aware of a substantial risk that a wrongful act may occur and his failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation.’” *Matter of Perez-Contreras*, 20 I&N Dec. at 618 (quoting § 9A.08.010(1)(d) of the Revised Code of Washington).

At the time of the respondent’s conviction, vehicular manslaughter under California Penal Code § 192(c)(1) (2010) required “driving a vehicle in the commission of an unlawful act, not amounting to felony, and with gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.” The California Jury Instructions – Criminal defined gross negligence as follows:

["Criminal negligence"] ["Gross negligence"] means conduct which is more than ordinary negligence. Ordinary negligence is the failure to exercise ordinary or reasonable care.

["Criminal negligence"] ["Gross negligence"] refers to [a] negligent act[s] which [is] [are] aggravated, reckless or flagrant and which [is] [are] such a departure from the conduct of an ordinarily prudent, careful person under the same circumstances as to be contrary to a proper regard for [human life] [danger to human life] or to constitute indifference to the consequences of those act[s]. The facts must be such that the consequences of the negligent act[s] could reasonably have been foreseen and it must appear that the [death] [danger to human life] was not the result of inattention, mistaken judgment or misadventure but the natural and probable result of an aggravated, reckless or flagrantly negligent act.

CAL. JURY INSTR. – CRIM. 3.36.

These jury instructions have been used in cases culminating in convictions for vehicular manslaughter under § 192(c)(1). *See, e.g., People v. Wattier*, 59 Cal. Rptr. 2d 483, 488 (Cal. Ct. App. 1996) (“[T]he court instructed the jury on the difference between gross and simple negligence. (CALJIC No. 3.36, as given.)”). California courts of appeals have similarly defined the gross negligence *mens rea* in § 192(c)(1) as “such a departure from the conduct of an ordinarily prudent person as to be incompatible with a proper regard for human life.” *People v. Schmies*, 51 Cal. Rptr.2d 185, 190 n. 4 (Cal. Ct. App. 1985), *rev. denied* (citing *People v. Peabody*, 119 Cal. Rptr. 780, 782 (Cal. 1975)).

We agree with the Immigration Judge that, as applied to the generic definition for a crime involving moral turpitude, the gross negligence *mens rea* in § 192(c)(1) is legally indistinguishable from the criminal negligence *mens rea* at issue *Matter of Perez-Contreras*. “[A] departure from the conduct of an ordinarily prudent, careful person under the same circumstances[,]” is substantially similar to “a gross deviation from the standard of care that a reasonable man would exercise in the same situation.” And “to be contrary to a proper regard for [human life] . . . or to constitute indifference to the consequences of those act[s][.]” is not meaningfully different from “fails to be aware of a substantial risk that a wrongful act may occur” In sum, the gross negligence *mens rea* in § 192(c)(1) falls short of the kinds of criminal recklessness mental states

that we have previously held sufficient to support a determination of moral turpitude.¹ For this reason, the following order will be entered.

ORDER: The DHS's appeal is dismissed.



FOR THE BOARD

¹ Although the United States Court of Appeals for the Ninth Circuit has not assessed § 192(c)(1) as a crime involving moral turpitude, it has held that its gross negligence *mens rea* is insufficient for classification as a crime of violence. See *Lara-Cazares v. Gonzales*, 408 F.3d 1217 (9th Cir. 2005).