



**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 22041

**MARTINEZ LOPEZ, JUAN JOSE  
947690/A046-274-029  
IRWIN COUNTY DETENTION CENTER  
132 COTTON DRIVE  
OCILLA, GA 31774**

**DHS/ICE Office of Chief Counsel - ATL  
180 Ted Turner Dr., SW, Ste 332  
Atlanta, GA 30303**

**Name: MARTINEZ LOPEZ, JUAN JOSE**

**A 046-274-029**

**Date of this notice: 4/29/2016**

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

Userteam: Docket

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Falls Church, Virginia 22041

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File: A046 274 029 – Atlanta, GA

Date:

APR 29 2016

In re: JUAN JOSE MARTINEZ LOPEZ

IN REMOVAL PROCEEDINGS

APPEAL and MOTION

ON BEHALF OF RESPONDENT: Pro Se

ON BEHALF OF DHS: Danielle E. Kosacci  
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -  
Convicted of aggravated felony (as defined in section 101(a)(43)(F) of the  
Act)

APPLICATION: Continuance

The respondent, a native and citizen of Mexico has appealed from the decision of the Immigration Judge dated February 3, 2016. In that decision, the Immigration Judge sustained the charge of deportability based on the respondent's April 3, 2006, conviction for conspiracy to commit armed robbery in violation of North Carolina common law (I.J. at 1; Exhs. 1 and 2). As the respondent had no pending applications for relief, the Immigration Judge declined to further adjourn the proceedings and entered an order of removal (Tr. at 52-53). For the following reasons, the record will be remanded for the Immigration Judge to properly assess the respondent's deportability under sections 237(a)(2)(A)(iii) and 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. §§ 1227(a)(2)(A)(iii), 1101(a)(43)(F), after which the Immigration Judge should administratively return the record for resolution of the respondent's appeal.

The Department of Homeland Security ("DHS") must establish that the respondent is deportable as an aggravated felon by clear and convincing evidence. *See* section 240(c)(3) of the Act, 8 U.S.C. § 1229a(c)(3), 8 C.F.R. § 1240.8(a). The record reflects that the Immigration Judge sustained the charge on the basis of a Criminal Case Court Docket Inquiry from the North Carolina Administrative Office of the Courts, which reflects that the respondent was convicted on April 3, 2006, of "F Consp Armed Robbery Bus/Per General Statute: Common Law" (Exh. 2; Tr. at 18). The Immigration Judge acknowledged that the evidence "is probably not the greatest conviction records here" (Tr. at 18). Nevertheless, the Immigration Judge repeatedly characterized the respondent's conviction as a "very violent crime," an "ugly crime," and he "assume[d] a gun was involved in the armed robbery" (Tr. at 18, 31, 19).

However, the determination whether the respondent's conviction constitutes a crime of violence aggravated felony turns on a categorical analysis of the offense elements that the finder of fact would have been required to find beyond a reasonable doubt. *See*

*Donawa v. United States Attorney General*, 735 F.3d 1275, 1281 (11th Cir. 2013); *see also United States v. Estrella*, 758 F.3d 1239, 1245-46 (11th Cir. 2014). Once these elements are identified, then they can be applied to the definition for a crime of violence, 18 U.S.C. § 16, to determine if the respondent's generic conviction comes within the statutory definition for this aggravated felony. *See generally Matter of Alcantar*, 20 I&N Dec. 801 (BIA 1994).

Beyond the aforementioned printout, the DHS presented no further evidence to establish the respondent's deportability as an alien convicted of an aggravated felony. There is no indication in the record for what the elements of the offense are so as to enable the necessary categorical analysis. *See generally* 25A Strong's North Carolina Index 4th § 10 Distinction between common-law and armed robbery (Feb. 2016). On this record, we cannot engage in meaningful appellate review of the underlying determination of deportability.

The respondent did not concede that he is deportable as an aggravated felon, and he disputes the determination on appeal, albeit under a different legal theory (Respondent's Motion to Remand at 8). Under the circumstances, the question of the respondent's deportability has been properly preserved and presented for review on appeal. Accordingly, the following order will be entered.

ORDER: The record is remanded for the Immigration Judge to categorically assess the respondent's deportability as an aggravated felon, after which the Immigration Judge should administratively return the record for resolution of the respondent's appeal.

  
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FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
ATLANTA, GEORGIA

File: A046-274-029

February 3, 2016

In the Matter of

JUAN JOSE MARTINEZ LOPEZ

RESPONDENT

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)  
)

IN REMOVAL PROCEEDINGS

CHARGES:

APPLICATIONS:

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: DANIELLE SACHI

ORAL DECISION OF THE IMMIGRATION JUDGE

On the basis of the prior admissions, the Court finds removability has been established by clear, convincing and unequivocal evidence. The respondent is not a native or citizen of the United States but a native and citizen of Mexico who was admitted as a lawful permanent resident June 26, 1997. However, on April 3, 2006, he was convicted of conspiracy to commit armed robbery on business or person. He was sentenced to 25 to 39 months. The Court finds that is an aggravated felony as that term is defined under 101(a)(43)(F).

The respondent is not eligible for any form of relief the Court can consider, any

hardship his return would cause he or any member of his family. He is ineligible for a 212(h) waiver even under Lanier since he was admitted as a lawful permanent resident. The respondent does not have a fear of torture upon a return to Mexico. The Court finds that his conviction is an aggravated felony and a particularly serious crime. Accordingly, he does not appear to be eligible for any other relief.

**ORDER**

Hereby ordered removed, returned to Mexico, the country of nativity and citizenship, on the charges contained in the Notice to Appear.

**Please see the next page for electronic**

**signature**

WILLIAM A. CASSIDY  
Immigration Judge

//s//

Immigration Judge WILLIAM A. CASSIDY

cassidyw on March 8, 2016 at 11:49 AM GMT