U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: M[redacted]-V[redacted], M[redacted]... **A[redacted]518**

Date of this notice: 3/30/2018

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
Greer, Anne J.
Crossett, John P.

Userteam: Docket

File: [redacted] 518 – Atlanta, GA Date: MAR 30 2018

In re: M[redacted] M[redacted]-V[redacted] a.k.a. [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Eli A. Echols, Esquire

APPLICATION: Cancellation of removal for certain non-permanent residents

The respondent appeals from an Immigration Judge's decision, dated October 6, 2017, denying her application for cancellation of removal under section 240A(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1)(C), on the ground that she has been convicted of a crime involving moral turpitude (CIMT). The Department of Homeland Security (DHS) has not responded to the appeal. The appeal will be sustained and the record remanded for further proceedings.[1]

In 2016, the respondent—a native and citizen of Mexico—was convicted of failing to stop or return to the scene of a vehicle accident in violation of section 40-6-270(a) of the GEORGIA CODE ANNOTATED (GA. CODE ANN.) (IJ at 2-3; Exh. 3). The legal issue on appeal, which we review de novo, is whether this conviction was for a CIMT—"an offense under section 212(a)(2)[(A)(i)(I)]" of the Act that renders her ineligible for cancellation of removal pursuant to section 240A(b)(1)(C) of the Act. *See* 8 C.F.R. § 1003.1(d)(3)(ii); *Pierre v. U.S. Att'y Gen.*, 879 F.3d 1241, 1248-49 (11th Cir. 2018) ("Whether a conviction qualifies as a . . . "crime involving moral turpitude" under the [Act] is a question of law for the Court.").[2] We conclude that it was not.

The phrase "crime involving moral turpitude" describes a class of offenses involving reprehensible conduct committed with a culpable mental state. *Matter of Silva-Trevino*, 26 I&N Dec. 826, 834 (BIA 2016). In the United States Court of Appeals for the Eleventh Circuit, reprehensible conduct means "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." *Pierre v. U.S. Att'y Gen.*, 876 F.3d at 1251.

[1] The respondent's request for oral argument is denied.

[2] CIMT convictions are also per se bars to good moral character. Section 101(f)(3) of the Act, 8 U.S.C. § 1101(f)(3). The Immigration Judge found the respondent's conviction was a CIMT, and pretermitted her cancellation of removal application on both grounds (IJ at 5-6). Sections 240A(b)(1)(B) & (C) of the Act.

To determine whether a crime qualifies as a CIMT, we apply the traditional "categorical approach," under which we focus upon the statutory elements of the crime rather than the facts underlying the particular offense, considering the least culpable conduct necessary to obtain a conviction. *Cano v. U.S. Att'y Gen.*, 709 F.3d 1052, 1053 (11th Cir. 2013); *Fajardo v. U.S. Att'y Gen.*, 659 F.3d 1303, 1305 (11th Cir. 2011). An element of an offense is a fact that must be found by a jury beyond a reasonable doubt to sustain a conviction. *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016). When a criminal statute defines alternative modes of commission which carry different punishments, those alternatives are considered different elements which make the statute "divisible," allowing resort to the modified categorical approach. *Id.* at 2256. Under the modified categorical approach, the court may evaluate the record of conviction—i.e., the charging document, plea, verdict, and sentence—to determine which elements were required for the respondent's conviction. *Fajardo v. U.S. Att'y Gen.*, 659 F.3d at 1305.

The respondent was convicted under GA. CODE ANN. § 40-6-270, which states in relevant part:

> (a) The driver of any vehicle involved in an accident resulting in injury to or the death of any person or in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of the accident or shall stop as close thereto as possible and forthwith return to the scene of the accident and shall:
>
> > (1) Give his or her name and address and the registration number of the vehicle he or she is driving;
> > (2) Upon request and if it is available, exhibit his or her operator's license to the person struck or the driver or occupant of or person attending any vehicle collided with;
> > (3) Render to any person injured in such accident reasonable assistance, including the transporting, or the making of arrangements for the transporting, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such transporting is requested by the injured person; and
> > (4) Where a person injured in such accident is unconscious, appears deceased, or is otherwise unable to communicate, make every reasonable effort to ensure that emergency medical services and local law enforcement are contacted for the purpose of reporting the accident and making a request for assistance.
>
> The driver shall in every event remain at the scene of the accident until fulfilling the requirements of this subsection. Every such stop shall be made without obstructing traffic more than is necessary.
>
> (b) If such accident is the proximate cause of death or a serious injury, any person knowingly failing to stop and comply with the requirements of subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

> (c)(1) If such accident is the proximate cause of an injury other than a serious injury or if such accident resulted in damage to a vehicle which is driven or attended by any person, any person knowingly failing to stop or comply with the requirements of this Code section shall be guilty of a misdemeanor[.]

The statute is divisible, as GA. CODE ANN. § 40-6-270(a) defines a misdemeanor while GA. CODE ANN. § 40-6-270(b) defines a felony. The Immigration Judge found that the respondent was convicted under subsection (a), and this finding has not been challenged on appeal (IJ at 2; Exh. 3). The Immigration Judge also found that a conviction under this statute required "knowing" conduct, pursuant to GA. CODE ANN. § 40-6-270(c)(1), and thus had a sufficient mens rea for a CIMT (IJ at 4).

We conclude that the statute does not contain a sufficient mens rea, given how "knowingly" has been interpreted by the Georgia courts. Thus, the respondent's conviction is not a CIMT.

The Georgia courts have explained that the defendant "knows" about the accident when "the circumstances were such that a reasonable person would have believed that an accident had occurred resulting in death, damage or injury to another." *McKay v. State*, 592 S.E.2d 135, 137 (Ga. Ct. App. 2003) (internal quotes and citation omitted). This understanding of "knowingly" continues to be applied. *See, e.g.*, *Sevostiyanova v. State*, 722 S.E.2d 333, 345 (Ga. Ct. App. 2012); *Dalton v. State*, 650 S.E.2d 591 (Ga. Ct. App. 2007).

The way Georgia defines "knowingly" permits a defendant to be convicted under GA. CODE ANN. § 40-6-270 despite not having actual knowledge of possible harm. This is more akin to a criminal negligence standard, which we have held is insufficient for a CIMT. *See generally*, *Matter of Tavdidishvili*, 27 I&N Dec. 142 (BIA 2017). Rather, the Georgia statute would permit a defendant to be convicted for leaving the scene of an accident even if the defendant honestly, if unreasonably, believed the collision caused no injury or damage to another. *See Dalton v. State*, 650 S.E.2d at 591-92 (where the defendant stated he had merely "tapped" the car in front of him but believed it caused no damage, the court found he "knowingly" failed to stop and provide identification); *McKay v. State*, 592 S.E.2d at 137 (where the defendant struck a pedestrian and believed she was uninjured and she did not discover her injury until the next day, conviction for "knowingly" failing to remain and provide identification was affirmed). Because the respondent's statute, GA. CODE ANN. § 40-6-270(a), does not require a sufficiently culpable mental state, we conclude it is not a CIMT.[3]

Finally, the respondent argues that the Immigration Judge did not act as an impartial fact-finder, in that he found her conviction to be for a CIMT when the DHS had stated it researched the issue but did not believe the conviction was one of moral turpitude (Tr. at 15; Respondent's Br. at 2, 11-12). However, it is the duty of the Immigration Judge to evaluate the respondent's eligibility for relief, and thus we do not find his conduct on this point to have been improper.

[3] In view of this determination, we need not decide whether the statute would otherwise meet the requirements of a CIMT.

Because the respondent has not been convicted of a CIMT, she is not ineligible for cancellation of removal on that basis. As such, we will remand the record to the Immigration Judge to evaluate whether the respondent is otherwise eligible for, and deserving of, cancellation of removal. Accordingly, the following orders shall be entered.

ORDER: The appeal is sustained, and the Immigration Judge's decision is vacated.

FURTHER ORDER: The record is remanded for further proceedings consistent with this decision and for the entry of a new decision.

FOR THE BOARD

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

IN THE MATTER OF	)	**IN REMOVAL PROCEEDINGS**
	)	
M[redacted]-V[redacted], M[redacted]	)	**File No. A# [redacted]518**
	)	
Respondent	)	
	)	

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that Respondent is an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATION: Respondent's Application for Cancellation of Removal for Certain Non-Permanent Residents, pursuant to Section 240A(b)(1) of the Act.

APPEARANCES

ON BEHALF OF THE RESPONDENT:
Juan F. Davalos II, Esq.
Socheat Chea, P.C.
3500 Duluth Park Lane, Building 300
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ON BEHALF OF THE GOVERNMENT:
Office of the Chief Counsel
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180 Ted Turner Drive SW, Suite 332
Atlanta, Georgia 30303

DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

M[redacted] M[redacted]-V[redacted] ("Respondent") is a female native and citizen of Mexico. Respondent arrived in the United States at or near an unknown place on or about an unknown date. She was not then admitted or paroled after inspection by an immigration officer.

On March 8, 2017 the Department of Homeland Security ("Department") placed Respondent into removal proceedings through the issuance of a Notice to Appear ("NTA"), charging her as removable pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("Act"), in that she is an alien present in the United States without being adm+itted or paroled, or that she arrived in the United States at any time or place other than as designated by the Attorney General.[1] See Exh. 1. On August 23, 2017, Respondent admitted the

[1] On July 28, 2011, Respondent filed a Motion to Change Venue and Notice of Appearance. On August 10, 2011, the Court granted this motion and venue was changed from New Orleans, Louisiana to Memphis, Tennessee. On

allegations and conceded the charge in the NTA. On this same date, the Court sustained the charge of removability based on Respondent's admissions and concession. Also, on this date, the Court gave the parties an opportunity to brief the issue of whether Respondent's conviction for failure to stop or return to the scene of an accident in violation of O.C.G.A. § 40-6-270(a) was a crime involving moral turpitude.

On August 11, 2017, Respondent filed her Form 42B Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents.

The Court has carefully reviewed the entire record before it. All evidence has been considered, even if not specifically discussed further in this decision. For the reasons set forth below, the Court will pretermit Respondent's application for cancellation of removal.

II. EXHIBITS

Exhibit 1: Notice to Appear, filed March 22, 2017
Exhibit 2: Respondent's Form 42B Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, filed August 11, 2017
Exhibit 3: Department of Homeland Security's Notice of Filing, filed April 3, 2017
Exhibit 4: Respondent's First Submission of Evidence in Support of Form EOIR 42B, filed August 8, 2017

III. STATEMENT OF LAW

Under Section 240A(b)(1) of the Act, the Court may grant cancellation of removal to removable aliens who: (1) have been continuously present in the United States for at least ten years, (2) have been persons of good moral character during the relevant ten-year period, (3) have not been convicted of a disqualifying crime, and (4) have demonstrated that their removal would result in "exceptional and extremely unusual hardship" to their qualifying relatives. INA § 240A(b)(1).

IV. DISCUSSION

A. Respondent has been convicted of crime involving moral turpitude.

A crime involving moral turpitude ("CIMT") has two elements: (1) reprehensible conduct and (2) a culpable mental state. Matter of Ortega-Lopez, 26 I&N Dec. 99, 100 (BIA 2013) (citing Matter of Louissaint, 24 I&N Dec. 754, 756–57 (BIA 2009)). Reprehensible conduct is defined as conduct that is "inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." See Gelin v. U.S. Att'y Gen., 837 F.3d 1236, 1240 (11th Cir. 2016); Ortega-Lopez, 26 I&N Dec. at 100; Matter of E.E. Hernandez, 26 I&N Dec. 397, 398 (BIA 2014). A culpable mental state involves "some

March 8, 2012, Respondent filed another Motion to Change Venue. On this same day, the Court granted Respondent's motion and venue was changed from Memphis, Tennessee to Atlanta, Georgia.

degree of scienter, either specific intent, deliberateness, willfulness, or recklessness." See Louissaint, 24 I&N Dec. at 756–57.

To determine whether a crime meets the definition of a CIMT, the Court must apply the categorical and modified categorical approaches. Matter of Silva-Trevino, 26 I&N Dec. 826, 827 (BIA 2016). See Mathis v. United States, 136 S. Ct. 2243, 2247 (2016); Descamps v. United States, 133 S. Ct. 2276, 2283–84 (2013); Taylor v. United States, 495 U.S. 575, 599–602 (1990); Gelin, 837 F.3d at 1240. Under the categorical approach, the Court, looking only at the statute at issue, must compare this statute with the generic definition of a CIMT. See Mathis, 136 S. Ct. at 2248; Gelin, 837 F.3d at 1241. In doing so, the Court must determine whether the least conduct criminalized by the statute involves moral turpitude. See id.; Donawa v. U.S. Att'y Gen., 735 F.3d 1275, 1280 (11th Cir. 2013).

If the statute reaches conduct that does not involve moral turpitude, the Court first must determine whether there is a "realistic probability" that the statute would reach conduct that does not involve moral turpitude. See Gelin, 837 F.3d at 1246; Ramos v. U.S. Att'y Gen., 709 F.3d 1066, 1071–72 (11th Cir. 2013); Accardo v. U.S. Att'y Gen., 634 F.3d 1333, 1337 (11th Cir. 2011). However, the Court need not make this determination if the statute's language makes it clear that the statute reaches conduct that does not involve moral turpitude. See Gelin, 837 F.3d at 1246; Ramos, 709 F.3d at 1071–72.

If the Court determines that the statute reaches conduct that does not involve moral turpitude, the Court must then determine whether the statute is divisible. See Ramos, 709 F.3d at 1072. A statute is divisible if it sets forth alternative elements of a crime. See Mathis, 136 S. Ct. at 2249; Descamps, 133 S.Ct. at 2281. A statute sets forth alternative elements of a crime if it provides for different ways to commit a crime. See United States v. Estrella, 758 F.3d 1239, 1246 (11th Cir. 2014). To determine if a statute is divisible, the Court should read the text of the statute and ask: (1) whether the prosecutor must select the relevant elements from a list of alternatives and (2) whether the jury must find that element beyond a reasonable doubt. Id. at 1245–46. See Mathis, 136 S. Ct. at 2248. In other words, a crime is divisible if a trial jury must convict based on one of the alternative elements. Estrella, 758 F.3d at 1246.

If the statute is divisible, then the Court may use the modified categorical approach and look at the record of conviction to determine which subsection of the statute that Respondent was convicted under. Descamps, 133 S. Ct at 2285–86; Shepard v. United States, 544 U.S. 13, 20 (2005). The record of conviction includes charges, jury instructions, bench trial judges' rulings of law and findings of fact, written plea agreements presented to the court, and facts adopted by defendants in their guilty pleas. Descamps, 133 S. Ct at 2285–86; Shepard, 544 U.S. at 20. The record of conviction does not include what Respondent actually did to commit the crime. Descamps, 133 S. Ct at 2285. If the record of conviction shows that Respondent was convicted under a subsection of the statute that involves moral turpitude, then Respondent's conviction is a CIMT. See Matter of Silva-Trevino, 26 I&N Dec. at 833, 835–36.

Here, the record shows that on September 7, 2016, Respondent was convicted of failure to stop or return to the scene of an accident in violation of O.C.G.A. § 40-6-270(a). See Exh. 3. O.C.G.A. § 40-6-270(a) states,

(a) "The driver of any vehicle involved in an accident resulting in injury to or the death of any person or in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of the accident or shall stop as close thereto as possible and forthwith return to the scene of the accident and shall:

(1) Give his or her name and address and the registration number of the vehicle he or she is driving;

(2) Upon request and if it is available, exhibit his or her operator's license to the person struck or the driver or occupant of or person attending any vehicle collided with;

(3) Render to any person injured in such accident reasonable assistance, including the transporting, or the making of arrangements for the transporting, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such transporting is requested by the injured person; and

(4) Where a person injured in such accident is unconscious, appears deceased, or is otherwise unable to communicate, make every reasonable effort to ensure that emergency medical services and local law enforcement are contacted for the purpose of reporting the accident and making a request for assistance.

The driver shall in every event remain at the scene of the accident until fulfilling the requirements of this subsection. Every such stop shall be made without obstructing traffic more than is necessary."

O.C.G.A. § 40-6-270(a).

The elements of O.C.G.A. § 40-6-270(a) are: (1) knowingly, (2) failing to immediately stop at or return to the scene of the accident, and (3) comply with the requirements specified in O.C.G.A. § 40-6-270(a). O.C.G.A. §§ 40-6-270(a), (c)(1); Ga. Jury Instructions-Criminal § 2.86.20; Bell v. State, 748 S.E.2d 382, 384 (Ga. 2013); Sevostiyanova v. State, 722 S.E.2d 333, 345 (Ga. Ct. App. 2012).

The Court finds that O.C.G.A. § 40-6-270(a) requires the culpable mental state necessary to meet the definition of a CIMT because it requires a mental state of knowledge. The Court similarly finds that a violation of O.C.G.A. § 40-6-270(a) involves reprehensible conduct. Applying the categorical approach, the least conduct criminalized by O.C.G.A. § 40-6-270(a) is failure to stop and return to the scene of an accident when the defendant knows that the accident caused damage to a vehicle that is either driven or attended. See O.C.G.A. § 40-6-270(a). This conduct meets the definition of reprehensible conduct because this conduct is contrary to accepted rule of morality to take responsibility for one's actions, especially in cases where one's actions may have caused harm to property or persons. This conduct also violates the societal duty that people owe to each other to ensure that they did not harm the other person involved in

the accident. Because O.C.G.A. § 40-6-270(a) requires a culpable mental state and involves reprehensible conduct, the Court finds that it is categorically a CIMT.

The Court's finding that O.C.G.A. § 40-6-270(a) is a CIMT is supported by case law. In Villeda v. U.S. Att'y Gen., the Eleventh Circuit upheld the Board's decision that a crime similar to O.C.G.A. § 40-6-270(a) was a CIMT. 532 Fed. Appx. 897 (11th Cir. 2013) (unpublished and cited for persuasiveness). The crime at issue in Villeda involved the failure to stop and remain at the scene of the accident. Id. at 898 (unpublished and cited for persuasiveness). The Court finds Villeda persuasive here because the statute defining the crime in Villeda is similar to O.C.G.A. § 40-6-270(a) in that both statutes require drivers involved in accidents to stop immediately at the scene of the accident, give certain information to the other driver, and render aid to the other driver if necessary. Id. (unpublished and cited for persuasiveness).

Furthermore, in Garcia-Maldonado v. Gonzales, the Fifth Circuit upheld the Board's determination that a crime similar to O.C.G.A. § 40-6-270(a)—failure to stop and render aid at the scene of an accident—is a CIMT. 491 F.3d 284, 287–90 (5th Cir. 2007) (cited for persuasiveness). There, the Fifth Circuit reasoned that "the failure to stop and render aid after being involved in an automobile accident is the type of base behavior that reflects moral turpitude" because such behavior "reflects an intentional attempt to evade responsibility and is intrinsically wrong." Id. at 290 (cited for persuasiveness). The Court finds this reasoning persuasive here because both the statute at issue in Garcia-Maldonado and O.C.G.A. § 40-6-270(a) require drivers involved in accidents to: (1) immediately stop the vehicle at the scene of the accident or as close to the scene as possible to the scene of the accident; (2) give their name, address, and vehicle registration number to the other driver; and (3) render aid to the other driver if necessary. See O.C.G.A. § 40-6-270(a); Garcia-Maldonado, 491 F.3d at 288–89.

B. Respondent's conviction for a crime involving moral turpitude makes her statutorily ineligible for relief.

Respondent applied for cancellation of removal for certain permanent residents under Section 240A(b) of the Act. See Exh. 2. Respondent is not statutorily eligible for this form of relief because she has not established that she possesses the requisite good moral character or that she has not been convicted of a disqualifying crime. See INA § 240A(b)(1)(B) & (C).

Respondent failed to established the requisite good moral character because her conviction under O.C.G.A. § 40-6-270(a) for failure to stop or return to the scene of an accident constitutes a CIMT. See INA § 240A(b)(1)(B). Respondents who commit CIMTs cannot establish good moral character because their conduct is described in Section 212(a)(2)(A)(i)(I) of the Act, which is one of the eight categories listed in Section 101(f) barring a finding of good moral character.[2] INA §§ 101(f), 212(a)(2)(A)(i)(I).

[2] These eight categories are: (1) habitual drunkards; (2) people described in paragraphs (2)(D), (6)(E), and (10)(A) of Section 212(a) of this Act, subparagraphs (A) and (B) of Section 212(a)(2), or subparagraph (C) of Section 212(a)(2) except as such paragraph relates to a single offense of simple possession of thirty grams or less of marihuana; (3) people who derive their income principally from illegal gambling activities; (4) people who have been convicted of two or more gambling offenses committed during the relevant period for good moral character; (5) people who have given false testimony to obtain any benefits under the Act; (6) people who have been confined during the good moral character relevant period, because of a conviction, to a penal institution for an aggregate

Respondent's conviction for a CIMT occurred within the relevant ten-year period, which is calculated backwards from the date on which the Court issues a final decision in Respondent's case. See Matter of Bautista-Gomez, 23 I&N Dec. 893, 894 (BIA 2006); Matter of Ortega-Cabrera, 23 I&N Dec. 793, 797 (BIA 2005) (holding that Respondent's violation in 1991 of anti-smuggling provision contained in Section 212(a)(6)(E)(i) of the Act was outside relevant ten-year period when Court issued decision in 2003). The Court is issuing a final decision in Respondent's case in 2017, making the relevant period for determining good moral character from 2007 to 2017. Respondent's conviction for a CIMT occurred within this period on September 7, 2016.

Respondent's conviction for a CIMT also constitutes a disqualifying crime. See INA § 240A(b)(1)(C). Disqualifying crimes are described in Sections 212(a)(2), 237(a)(2), or 237(a)(3), subject to paragraph (5) of the Act. Id. As previously discussed, Respondent's conviction for a CIMT falls within Section 212(a)(2)(A)(i)(I) of the Act.

Having found that Respondent's conviction under O.C.G.A. § 40-6-270(a) for failure to stop or return to the scene of an accident constitutes a CIMT, the Court finds that she has not established that she possesses the requisite good moral character or that she has not been convicted of a disqualifying crime. Accordingly, the Court pretermits her application for cancellation of removal under Section 240A(b) of the Act. See 8 C.F.R. 1240.21(c)(1).

In light of the foregoing, the Court will enter the following orders:

ORDER

It is ordered that: Respondent's application for cancellation of removal under Section 240A(b) of the Act is **PRETERMITTED.**

It is further ordered that: Respondent will be allowed to **PROCEED** with all other available forms of relief.

12/6/17
Date

William A. Cassidy
United States Immigration Judge
Atlanta, Georgia

period of 180 days or more, regardless of whether the offense(s) for which they were confined were committed within or without such period; (7) people who have been convicted of an aggravated felony; and (8) people who have engaged in conduct described in Section 212(a)(3)(E) or 212(a)(2)(G).