U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: DOMINGUEZ, RONAL ANTONIO **A 040-541-465**

Date of this notice: 10/3/2017

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

File: A040 541 465 – Boston, MA Date: OCT - 3 2017

In re: Ronal Antonio DOMINGUEZ a.k.a. Ronald Delson a.k.a. Ronald Dominguez

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Emma C. Winger, Esquire

ON BEHALF OF DHS: Mark Sauter
Assistant Chief Counsel

APPLICATION: Termination

The Department of Homeland Security ("DHS") appeals from an Immigration Judge's May 8, 2015, decision terminating removal proceedings against the respondent. The respondent opposes the appeal. The appeal will be dismissed.

The respondent, a native and citizen of the Dominican Republic and a lawful permanent resident of the United States, has sustained two Massachusetts convictions that are relevant here: (1) in 1999, for malicious damage to property under MASS. GEN. LAWS ANN. ch. 266, § 127 (hereafter "section 127"), for which he was sentenced to 18 months in a house of correction (Exhs. 9, 11); and (2) in 2013, for assault and battery upon a police officer ("ABPO") under MASS. GEN. LAWS ANN. ch. 265, § 13D (hereafter "section 13D"), for which he was initially sentenced to 1 year in a house of correction (Exhs. 1, 3).

In a notice to appear filed in December 2014 (Exh. 1), the DHS charged that the respondent's conviction under section 13D renders him removable from the United States under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien convicted of an "aggravated felony," namely, a "crime of violence" under 18 U.S.C. § 16 for which the term of imprisonment is at least one year. *See* section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). In March 2015, moreover, the DHS lodged an additional charge under section 237(a)(2)(A)(ii) of the Act (Exh. 9), alleging that the respondent's two convictions, taken together, render him removable as an alien convicted of two crimes involving moral turpitude ("CIMT") not arising out of a single scheme of criminal misconduct. The Immigration Judge determined that neither charge could be sustained, however, because section 13D is categorically overbroad and indivisible vis-à-vis the "crime of violence" and CIMT definitions. This timely appeal followed, in which the DHS argues that section 13D is both an aggravated felony and a CIMT.

I. THE AGGRAVATED FELONY CHARGE

We will address the aggravated felony charge first because it is the more consequential of the two charges—an alien convicted of an aggravated felony is not only removable, but also ineligible for most forms of relief from removal.

The DHS challenges the Immigration Judge's determination that section 13D is categorically overbroad vis-à-vis the "crime of violence" definition. However, in October 2015 the respondent filed a pleading with this Board advising us that the Massachusetts trial court had reduced the sentence arising from his ABPO conviction from 1 year in a house of correction to 364 days. That assertion is verified by certified copies of conviction records which bear the signatures of the judge and the court clerk. The DHS was duly served with a copy of this pleading but has submitted no response.

We take administrative notice of the respondent's sentence reduction, which is evidenced by certified copies of official court records. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (authorizing the Board to take administrative notice of the contents of official documents). That sentence reduction is entitled to full faith and credit in these proceedings, moreover, regardless of what motivated it. *See Matter of Cota*, 23 I&N Dec. 849, 852 (BIA 2005). Thus, as the respondent's conviction under section 13D is no longer one for which "the term of imprisonment [is] at least 1 year," as required by section 101(a)(43)(F) of the Act, the underlying offense is excluded from "aggravated felony" treatment without regard to whether section 13D defines a crime of violence. For this reason, we will dismiss the DHS's appeal as moot to the extent it challenges the Immigration Judge's dismissal of the aggravated felony charge.

II. THE MULTIPLE CIMT CHARGE

We turn now to the multiple-CIMT charge. As noted previously, that charge is based on two convictions—the section 13D conviction already discussed, as well as a 1999 conviction for malicious damage to property. There is apparently no dispute that the 1999 conviction was for a CIMT, so the dispositive issue is whether section 13D also requires moral turpitude.

To determine whether section 13D defines a CIMT, we employ the "categorical approach," focusing on the minimum conduct that has a realistic probability of being prosecuted under that statute. *See Matter of J-G-D-F-*, 27 I&N Dec. 82, 83 (BIA 2017); *Matter of Silva-Trevino*, 26 I&N Dec. 826, 831 (BIA 2016); *Coelho v. Sessions*, 864 F.3d 56, 61 & n.1 (1st Cir. 2017). An offense involves moral turpitude if its elements require reprehensible conduct committed with a corrupt mental state. *Matter of Jimenez-Cedillo*, 27 I&N Dec. 1, 3 (BIA 2017) (citing *Matter of Silva-Trevino*, 26 I&N Dec. at 834). Conduct is "reprehensible" in the pertinent sense if it 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," while a "culpable" mental state is one which requires deliberation or consciousness, such as intent, knowledge, willfulness, or recklessness. *Id.*

In 2013, section 13D provided as follows:

> Whoever commits an assault and battery upon any public employee when such person is engaged in the performance of his duties at the time of such assault and battery, shall be punished by imprisonment for not less than ninety days nor more than two and one-half years in a house of correction or by a fine of not less than five hundred nor more than five thousand dollars.

MASS. GEN. LAWS ANN. ch. 265, § 13D (West 2013).

The offense of "assault and battery" is not statutorily defined in Massachusetts; its elements are derived from the common law. *Commonwealth v. Eberhart*, 965 N.E.2d 791, 798 (Mass. 2012) (citations omitted). The United States Court of Appeals for the First Circuit, in whose jurisdiction this matter arises, recently explained the elements of Massachusetts assault and battery as follows:

> Under the common law [of Massachusetts], there are two theories of assault and battery: intentional battery and reckless battery. [*Eberhart*, 965 N.E.2d] at 798 n.13 (citing *Commonwealth v. Porro*, ... 939 N.E.2d 1157, 1162 (2010)). Intentional assault and battery includes both harmful battery and offensive battery. Harmful battery is defined as "[a]ny touching 'with such violence that bodily harm is likely to result.'" *Eberhart*, 965 N.E.2d at 798 (quoting *Commonwealth v. Burke*, ... 457 N.E.2d 622, 624 (1983)). Offensive battery is defined as any unconsented touching that constitutes an "affront to the victim's personal integrity." *Id.* (quoting *Burke*, 457 N.E.2d at 624). In contrast, reckless battery involves the "wilful, wanton and reckless act which results in personal injury to another." *Id.* (quoting *Commonwealth v. Welch*, 450 N.E.2d 1100, 1102 (Mass. App. Ct. 1983)).

United States v. Faust, 853 F.3d 39, 55 (1st Cir. 2017), *reh'g denied*, No. 14-2292, 2017 WL 3045957 (1st Cir. July 19, 2017); *see also Commonwealth v. Beal*, 52 N.E.3d 998, 1009 (Mass. 2016) ("assault and battery upon a public employee can be committed through a harmful battery, a reckless battery, or an offensive battery.").

In addition to the commission of an "assault and battery," section 13D requires proof beyond a reasonable doubt that the offense was committed against a victim who was then engaged in the performance of his or her duties as a "public employee"—a class of persons which includes (but is not limited to) police officers. *Commonwealth v. Beal*, 52 N.E.3d at 1009. Moreover, the Government must prove that the accused *knew* the victim to be a public employee at the time of the offense. *United States v. Santos*, 363 F.3d 19, 23 (1st Cir. 2004) (citing cases), *cert. denied*, 544 U.S. 923 (2005).

Comparing section 13D to the CIMT definition, we ask first whether its elements require the commission of "reprehensible conduct." Over the years the Board and the Federal courts have established some ground rules for determining when an offense involving forcible interference with a police officer is "reprehensible" enough to count as a CIMT. The baseline rule is that knowingly resisting arrest or otherwise interfering with a police officer by committing a simple assault and battery—i.e., an offensive but non-injurious "touching" committed with general intent—is *not* a CIMT. *See Matter of B-*, 5 I&N Dec. 538 (BIA 1953), *modified in part by Matter of Danesh*, 19 I&N Dec. 669, 672-73 (BIA 1988); *Garcia-Meza v. Mukasey*, 516 F.3d 535, 537 (7th Cir. 2008); *United States ex rel. Zaffarano v. Corsi*, 63 F.2d 757, 758 (2d Cir. 1933); *Ciambelli ex rel. Maranci v. Johnson*, 12 F.2d 465, 466 (D. Mass. 1926).

When an alien is convicted of interfering with a law enforcement officer under a statute that includes elements more serious than those associated with a simple assault or battery, however, the moral turpitude inquiry is less straightforward, and requires a relative weighing of the gravity of the danger contemplated by the offense as well as the offender's degree of mental culpability. Thus, we have held that knowingly resisting arrest or interfering with a police officer *does* involve

moral turpitude if the statute of conviction requires either: (1) injury to the officer, *see Matter of Danesh*, 19 I&N Dec. at 670-73,[1] or (2) use of a deadly weapon, *see Matter of Logan*, 17 I&N Dec. 367, 368-69 (BIA 1980). Conversely, we have held that infliction of injury upon an officer does not involve moral turpitude if the statute defining the offense does not require knowledge on the part of the offender that the victim was an officer. *See Matter of O-*, 4 I&N Dec. 301, 311 (BIA 1951).[2] With this background in mind, we return to the elements of the respondent's offense.

As noted previously, "assault and battery upon a public employee [in Massachusetts] can be committed through a harmful battery, a reckless battery, or an offensive battery." *Commonwealth v. Beal*, 52 N.E.3d at 1009. Under *Matter of B-*, a merely "offensive" battery upon a police officer *is not* a CIMT, even if committed intentionally. Under *Matter of Danesh*, however, a "harmful battery" upon a known police officer *is* a CIMT. We have never squarely decided whether moral turpitude inheres in a "reckless assault" that causes bodily injury to a known police officer—thus far, we have only found reckless assault to be a CIMT where the offense involved either the use of a deadly weapon or the use of force that is likely to result in *serious* bodily injury to the victim. *Matter of Wu*, 27 I&N Dec. 8, 15 (BIA 2017); *Matter of Fualaau*, 21 I&N Dec. 475, 478 (BIA 1996); *Matter of Medina*, 15 I&N Dec. 611, 612-13 (BIA 1976). We find it unnecessary to conclusively resolve that question here, however—the fact that section 13D covers offensive but non-injurious batteries upon police officers is sufficient, without more, to demonstrate that it is "categorically overbroad" vis-à-vis the CIMT definition.

Further, even if we assume that section 13D is a "divisible" statute with respect to the CIMT definition, so as to warrant consideration of the conviction record under the "modified categorical approach," *see Matter of Silva-Trevino*, 26 I&N Dec. at 833, the admissible documents contained in the present record do not meaningfully narrow down the elements of the respondent's offense of conviction. The criminal complaint charges that the respondent "did assault and beat" a police officer (Exh. 13, at unnumbered p. 4), but it neither specifies the mental state with which that act was committed nor clarifies whether the battery was of the "harmful" or "offensive" variety. And while the record does contain a police report which describes the respondent's offense conduct (Exh. 13, at unnumbered pp. 10-11), that document cannot be considered under the modified categorical approach. *See Shepard v. United States*, 544 U.S. 13, 21-26 (2005).

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[1] Several Federal courts have taken a slightly different tack, concluding that the crucial question for moral turpitude purposes is not whether the officer was injured in fact, but rather whether the offender *intended* to injure the officer by violence. *See Cano v. U.S. Att'y Gen.*, 709 F.3d 1052, 1054-55 (11th Cir. 2013) (Florida offense of resisting an officer with violence held a CIMT, even if the officer is uninjured, because the statute requires use or threatened use of violent physical force against the officer); *Partyka v. U.S. Att'y Gen.*, 417 F.3d 408, 413-15 (3d Cir. 2005) (New Jersey offense of aggravated assault of law enforcement officer held not a CIMT, despite requiring injury to the officer, because such injury can be inflicted unintentionally).

[2] We emphasize, however, that an assault statute requiring both the specific intent to injure and the actual infliction of bodily harm upon a victim defines a categorical CIMT, regardless of whether the victim was a police officer. *See Matter of Solon*, 24 I&N Dec. 239 (BIA 2007).

In sum, section 13D is a categorically overbroad statute vis-à-vis the CIMT definition. Further, even if we assume the statute's divisibility, application of the modified categorical approach does not help to narrow down the elements of the respondent's offense of conviction in a manner that would suffice to carry the DHS's burden of proof.

III. CONCLUSION

In conclusion, the Immigration Judge properly terminated the removal proceedings. In so holding, we do not minimize the seriousness of the respondent's crime; indeed, we have no doubt that many individual violations of section 13D involve both violence and moral turpitude. Under the categorical approach, however, we are concerned only with the minimum conduct covered by the offense's elements. No other issues are presented on appeal, and therefore the following order will be issued.

ORDER: The appeal is dismissed.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BOSTON, MASSACHUSETTS

File: A040-541-465 May 8, 2015

In the Matter of

RONAL ANTONIO DOMINGUEZ	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGES: Immigration and Nationality Act (INA), Section 237(a)(2)(A)(iii) - in that the respondent was convicted of an aggravated felony crime of violence; and INA Section 237(a)(2)(A)(ii) - in that the respondent was convicted of two or more crimes involving moral turpitude not arising out of a single scheme of criminal misconduct.

APPLICATION: Termination.

ON BEHALF OF RESPONDENT: MARTIN HARRIS

ON BEHALF OF DHS: BRANDON LOWY

ORAL DECISION OF THE IMMIGRATION JUDGE

Removal proceedings against the respondent, Ronal Dominguez, were initiated on December 5, 2014, with the filing in Immigration Court of a Notice to Appear. The notice alleged that the respondent was not a citizen or national of the United States, but was a native and citizen of the Dominican Republic; that he was admitted to the United States at Miami on or about November 17, 1986, as an immigrant; that on May 14, 2013, he was convicted in the Peabody District Court in Peabody, Massachusetts for

the offense of assault and battery on a police officer, and that he was sentenced to a term of imprisonment of one year in the House of Corrections. See Exhibit 1.

On or about March 16, 2015, the Department of Homeland Security filed with the Court an I-261, two additional allegations and an additional charge of removability. See Exhibit 9. The I-261 alleged that the respondent was convicted on September 24, 1999, in the Lynn District Court in Lynn, Massachusetts for the offense of malicious damage to property; and that that conviction for malicious damage as well as the aforesaid assault and battery on a police officer did not arise out of a single scheme of criminal misconduct. The respondent was additionally charged under INA Section 237(a)(2)(A)(ii).

On the issue of removability, the Court received an I-213 as well as conviction records for assault and battery on a police officer and malicious destruction of property. The I-213 is contained at Exhibit 2. The convictions for assault and battery on a police officer are contained at Exhibits 3 and 13. The conviction record for malicious destruction of property is contained at Exhibit 11. The exhibits all establish that the allegations set forth in the Notice to Appear are true. However, the respondent, through counsel, has filed a motion to terminate, arguing that neither conviction establishes a crime of violence or crimes involving moral turpitude.

At the outset the Court does find that the respondent's 1999 conviction for malicious destruction of property, under Massachusetts law, is a crime involving moral turpitude. See Da Silva Neto v. Holder, 680 F.3d 25 (1st Cir. 2012). At issue is whether the respondent's conviction for assault and battery on a police officer is either an aggravated felony or a crime involving moral turpitude.

The offense of assault and battery on a police officer is a misdemeanor under Massachusetts law. See Massachusetts General Law, Chapter 274, Section 1 (a crime

punishable by death or imprisonment in the state prison is a felony, all other crimes are misdemeanors). The assault and battery on a police officer law in Massachusetts would be classified as a felony under Federal law because it is punishable by a term of imprisonment of more than one year. See Massachusetts General Law, Chapter 265, Section 13D. Accordingly, the Court must consider whether the respondent's offense qualifies as a crime of violence under either provision of 18 U.S.C. Section 16. See Matter of Velasquez, 25 I&N Dec. at 280.

The Massachusetts statute under which the respondent was convicted of assault and battery on a police officer provides:

> Whoever commits an assault and battery upon any public employee when such person is engaged in the performance of his duties at the time of such assault and battery, shall be punished by imprisonment for not less than ninety days nor more than two and one-half years in a house of correction or by a fine of not less than five hundred nor more than five thousand dollars.

Massachusetts General Law Chapter 265, Section 13D. To be convicted under this provision, the prosecution must prove the elements of assault and battery as well as purposeful and unwelcome contact with a person the defendant knows to be a law enforcement officer actually engaged in the performance of official duty. United States v. Santos, 363 F.3d 19, 23 (1st Cir. 2004). See also Commonwealth v. Correia, 50 Mass. App.Ct. 455 (Mass. 2000). Assault and battery is defined by Massachusetts Common Law as the intentional and unjustified use of force upon the person of another, however slight, or the intentional commission of a wanton or reckless act (something more than gross negligence) causing physical or bodily injury to another. Commonwealth v. Correia, 50 Mass. App.Ct. 455.

Accordingly, the Massachusetts statute criminalizing assault and battery on a police officer consists of two separate offenses with distinct elements - intentional assault and battery on a police officer and reckless assault and battery on a police officer. See Massachusetts Model Criminal Jury Instructions 6.210, revised May 2011. Specifically, under the statute, the minimum conduct necessary to complete the intentional assault and battery on a police officer is simply "a touching done without the victim's consent." Whereas, reckless assault and battery on a police officer requires "bodily injury." See Massachusetts Model Criminal Jury Instructions 6.210. As intentional assault and battery on a police officer under Massachusetts law may encompass conduct that does not necessarily require violent force or force capable of causing physical pain or injury to another person, the respondent's conviction thereunder does not categorically constitute a crime of violence. Matter of Velasquez, 25 I&N Dec. 281-283.

Further, although reckless assault and battery on a police officer requires as an element bodily injury, its reference to reckless conduct renders it incapable of constituting a crime of violence within the meaning of 18 U.S.C. Section 16(a). See Matter of Chairez, 26 I&N Dec. 352 (finding that a subsection of the Utah statute criminalizing felony discharge of a firearm was not a crime of violence under 18 U.S.C. Section 16(a) because it encompassed reckless conduct). The Board's reasoning in Chairez is instructive, explaining that "because the offense defined by the Utah statute can be proven by reference to reckless conduct, it is not a crime of violence under 18 U.S.C. Section 16(a) because it does not have as an element the deliberate use of violent physical force against the person or property of another." 26 I&N Dec. 352. In short, a conviction for assault and battery on a police officer under the Massachusetts statute can never constitute a crime of violence as defined in 18 U.S. Code Section

16(a) regardless of which version of the offense formed the basis of the conviction. Hence, with respect to the definition of a crime of violence under 18 U.S.C. Section 16(a), the Massachusetts statute is overbroad. See United States v. Fish, 758 F.3d 1, 9 (1st Cir. 2014) (holding that assault and battery with a dangerous weapon under Massachusetts General Law Chapter 265, Section 15A(b) is overbroad in relation to 18 U.S.C. Section 16(a) because assault and battery under Massachusetts law, the lessor included offense, "may be accomplished by a mere touching, however slight"). Accordingly, the respondent's conviction thereunder cannot qualify as a crime of violence under 18 U.S.C. Section 16(a).

With respect to the definition of a crime of violence under 18 U.S.C. Section 16(b), although it is required that there be a substantial risk that physical force may be used in the course of committing a particular offense, the type of force contemplated is not necessarily violent force. Nevertheless, 18 U.S.C. Section 16(b) does include a *mens rea* component. See Leocal v. Ashcroft, 543 U.S. 1, 9-10 (2004) (holding that 18 U.S.C. Section 16(b) does not reach negligence or less crimes based on the reasoning of term use under that section requires active employment). The First Circuit has extended the Supreme Court's rationale in Leocal to hold that 18 U.S.C. Section 16(b) does not reach recklessness offenses. Fish, 758 F.3d 9-10.

As discussed above, the Massachusetts statute criminalizing assault and battery on a police officer consists of two separate offenses, intentional assault and battery and reckless assault and battery on a police officer. Thus, as the Massachusetts statute includes a minimum *mens rea* of recklessness, it encompasses some conduct that does not meet the definition of a crime of violence under 18 U.S.C. Section 16(b). Based on the foregoing, the Court cannot conclude that the Department has established through clear and convincing evidence that the respondent's conviction for assault and battery

on a police officer under Massachusetts General Law, Chapter 265, Section 13B qualifies as an aggravated felony under INA Section 101(a)(43)(F). Accordingly, the charge of removability under INA Section 237(a)(2)(A)(iii) cannot be sustained.

With respect to whether or not the offense of assault and battery on a police officer under Massachusetts law is also a crime involving moral turpitude, a similar analysis takes place. Assault and battery is defined by Massachusetts Common Law as the intentional and unjustified use of force upon the person of another, however slight, or the intentional commission of a wanton or reckless act, which is something more than gross negligence, causing physical or bodily injury to another. See Correia, 50 Mass. App. Ct. 456. Accordingly, the Massachusetts statute criminalizing assault and battery on a police officer consists of both intentional assault and battery and reckless assault and battery on a police officer, each with distinct elements. Although both offenses require that the defendant know that the victim was a police officer engaged in the performance of his duties, there is a realistic probability that a conviction under this statute could reach mere unwelcomed contact that does not involve bodily injury. Conduct, thus, that does not involve moral turpitude. See Matter of Danesh, 19 I&N Dec. 669, 670. Therefore, the respondent's conviction of assault and battery on a police officer under the Massachusetts statute does not categorically qualify as a crime involving moral turpitude.

Nevertheless, reckless assault and battery on a police officer under the Massachusetts statute, requiring both bodily injury and knowledge of the perpetrator that the victim is a member of a protected class, does categorically qualify as a crime involving moral turpitude. See Matter of Fualaau, 21 I&N Dec. 475, 478 (BIA 1996) (holding that where reckless conduct is an element of a statute, a crime of assault can be but is not per se ~~say~~ a crime involving moral turpitude). Consequently, the

Massachusetts statute is divisible, warranting an application of the modified categorical approach in order to determine whether the alien's record of conviction constitutes a crime that in fact involves moral turpitude.

Applying the modified categorical approach here and looking into the record of conviction, the criminal complaint merely indicates that the respondent did assault and beat a police officer who was then engaged in the performance in his or her duties. See Exhibit 3, Criminal Complaint Docket No. 1386CR000004. This leaves unresolved this issue of whether the respondent's crime involved moral turpitude as the complaint does not reveal which subsumed offense under the Massachusetts statute the respondent was convicted. See Patel v. Holder, 707 F.3d 77 , 81 (1st Cir. 2013) (quoting Campbell v. Holder, 698 F.3d 29, 32 (1st Cir. 2012)).

Formerly, in analyzing whether a crime involved moral turpitude, the Court was allowed to look beyond both the statute and the record of conviction to extrinsic evidence to analyze the conduct to determine under which prong or prongs of a divisible statute the respondent was convicted. Recently, however, the Attorney General has issued a decision which has vacated the prior Attorney General's decision in Matter of Silva-Trevino, 24 I&N Dec. 687 (A.G. 2008). The current Attorney General's decision has vacated Matter of Silva-Trevino and, thus, this Court may not utilize the former Silva-Trevino analysis to determine what precisely a respondent was convicted of.

The Court has been given Exhibit 13, which contains another copy of the criminal docket pertaining to the respondent's assault and battery on a police officer conviction in 2013. The Government notes that on the sixth page of that exhibit, there is an application for criminal complaint and urges the Court to utilize that to determine what the precise portion of the statute that respondent was convicted of. The application for

criminal complaint, however, references the police report and the Court is not allowed to consider non-court documents in order to determine under which prong or prongs or under which part of a statute the respondent was convicted.

Accordingly, this Court cannot determine, based on the evidence before it, that the respondent was convicted of a portion of the assault and battery on a police officer statute that would constitute a crime involving moral turpitude. Thus, the Court cannot sustain the charge under INA Section 237(a)(2)(A)(ii), in that the Court can only determine that the respondent's 1999 conviction for malicious destruction of property is a crime involving moral turpitude and cannot find a second crime of moral turpitude. Inasmuch as neither charge of removability can be sustained by clear or convincing and unequivocal evidence, this Court must grant the respondent's motion to terminate and will do so with the following order:

ORDER

IT IS HEREBY ORDERED that the respondent's motion to terminate is granted. Such grant is without prejudice.

Please see the next page for electronic signature

STEVEN F. DAY
Immigration Judge

//s//

Immigration Judge STEVEN F. DAY

days on July 16, 2015 at 10:47 AM GMT