



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

*5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041*

**Brown, Eric
Gonzalez Olivieri LLC
2200 Southwest Fwy Ste. 550
Houston, TX 77098**

**DHS/ICE Office of Chief Counsel - HOD
126 Northpoint Drive, Suite 2020
HOUSTON, TX 77060**

Name: VALDEZ NAVARRO, JAVIER

A 017-988-072

Date of this notice: 5/13/2019

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
Grant, Edward R.
Kendall Clark, Molly

User team: Docket

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Falls Church, Virginia 22041

File: A017-988-072 – Houston, TX

Date:

MAY 13 2019

In re: Javier VALDEZ NAVARRO a.k.a. Javier Valdez

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Eric Brown, Esquire

APPLICATION: Reopening

On June 18, 2018, the respondent, a native and citizen of Mexico, submitted a motion to reopen and terminate proceedings in which the Board dismissed his appeal on January 25, 2001. The motion will be granted and these removal proceedings will be terminated without prejudice.

As this motion was filed more than 17 years after the Board's final administrative decision, it is statutorily time-barred. Section 240(c)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c)(2). The respondent, however, asks that this statutory deadline be equitably tolled, alternatively seeking sua sponte reopening and termination, as he contends that he is no longer removable under section 237(a)(2)(A)(iii) of the Act in light of the holding in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018).¹ See *Matter of G-D*, 22 I&N Dec. 1132 (BIA 1999); 8 C.F.R. § 1003.2(a).

The respondent was charged with being removable under section 237(a)(2)(A)(iii) of the Act for having been convicted of an aggravated felony crime of violence, as defined in section 101(a)(43)(F) of the Act, in light of his felony conviction for driving while intoxicated (Exh. 1). Following the Supreme Court's decision in *Sessions v. Dimaya*, the Fifth Circuit's decisions regarding 18 U.S.C. § 16(b) have been abrogated, and the respondent's offense can no longer be considered a crime of violence under 18 U.S.C. § 16(b). See, e.g., *United States v. Gonzalez-Longoria*, 831 F.3d 670, 675–77 (5th Cir. 2016), cert. denied, (U.S. May 14, 2018), and abrogated by *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018); see also *Leocal v. Ashcroft*, 543 U.S. 1 (2004) (holding that driving under the influence and causing serious bodily injury is not a crime of violence under 18 U.S.C. § 16(a) or (b)).

We recognize that the respondent reports that he was removed to Mexico (Motion at 4; Tab C), and that such removal was lawful and in accordance with applicable legal principles at the time. However, in light of the intervening Supreme Court precedent the respondent is not removable on the sole ground of removability charged in the Notice to Appear.

¹ In *Sessions v. Dimaya* the Supreme Court held that the crime of violence definition found in 18 U.S.C. § 16(b)'s residual clause, as incorporated into the definition of an aggravated felony at section 101(a)(43)(F) of the Act, was unconstitutionally vague in violation of due process. *Sessions v. Dimaya*, 138 S. Ct. at 1213-16.

Therefore, we find that termination of the proceedings is warranted. Accordingly, the following order shall be entered.

ORDER: The respondent's motion is granted, and these removal proceedings are terminated without prejudice.



FOR THE BOARD