



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**DHS/ICE Office of Chief Counsel - BOS  
P.O. Box 8728  
Boston, MA 02114**

**Name: FERNANDES-LOPES, ARNALDO**

**A 036-784-465**

**Date of this notice: 11/30/2017**

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:  
Grant, Edward R.

Userteam: Docket

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*WJ*

Falls Church, Virginia 22041

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File: A036 784 465 – Boston, MA

Date:

In re: Arnaldo FERNANDES-LOPES

NOV 30 2017

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Susan Church, Esquire

ON BEHALF OF DHS: Peter J. Pratt  
Assistant Chief Counsel

APPLICATION: Reopening

The final order of removal in these proceedings was entered by the Board on October 14, 2010, when we dismissed the respondent's appeal. The respondent filed an untimely motion to reopen his proceedings on May 5, 2017. *See* sections 240(c)(7)(A), (C) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229a(c)(7)(A), (C); 8 C.F.R. § 1003.2(c)(2). The respondent does not dispute the untimeliness of his motion, but requests that the Board exercise its sua sponte authority to reopen his proceedings in the interests of justice. *See* 8 C.F.R. § 1003.2(a). The Department of Homeland Security (DHS) opposes the motion. The motion will be granted.

The respondent requests reopening and reconsideration of his removability in light of the Supreme Court's decisions in *Mathis v. United States*, 136 S.Ct. 2243 (2016) and the United States Court of Appeals for the First Circuit's decisions in *United States v. Holloway*, 630 F.3d 252 (1st Cir. 2011), *United States v. Fish*, 758 F.3d 1 (1st Cir. 2014), and *Whyte v. Lynch*, 807 F.3d 463 (1st Cir. 2015).<sup>1</sup> Specifically, he asserts that his misdemeanor conviction under Massachusetts General Law chapter 265 section 13D no longer constitutes an aggravated felony under section 101(a)(43)(F) of the Act; 8 U.S.C. § 1101(a)(43)(F). As the respondent has presented evidence of a change in law that may impact his removability, we will reopen the proceedings on our own motion. *See* 8 C.F.R. § 1003.2(a); *see also Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). On remand, the Immigration Judge may receive any additional evidence he deems appropriate to the full resolution of this matter, including additional or substituted charges of removability, if any.

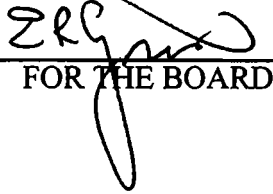
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<sup>1</sup> The DHS argues that *United States v. Dancy*, 640 F.3d 455 (1st Cir. 2011), which holds that assault and battery on a police officer is categorically a crime of violence under the ACCA, is still controlling. However, prior to the filing of the DHS's opposition, the First Circuit acknowledged that this offense is not a categorical crime of violence, affirmatively overruling *United States v. Dancy* on this point. *See United States v. Faust*, 853 F.3d 39, 50, 55, 58 (1st Cir. 2017), *reh'g denied*, No. 14-2292, 2017 WL 3045957 (1st Cir. July 19, 2017). The First Circuit found the Massachusetts statute to be divisible, *United States v. Faust*, 853 F.3d at 55-58, and on remand, the Immigration Judge should apply the modified categorical approach to the respondent's conviction.

See 8 C.F.R. §§ 1003.30 and 1240.10(e). Accordingly, the record will be remanded to the Immigration Judge for further consideration of the respondent's removability in light of the change in law. Accordingly, the following orders will be entered.

ORDER: The respondent's motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings not inconsistent with the foregoing opinion and for the entry of a new decision.

  
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FOR THE BOARD