



**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 20530

**Rubin, Jeffrey B., Esq.  
Law Office of Jeffrey B. Rubin  
One Center Plaza, Suite 230  
Boston, MA 02108**

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

**Name: CONTRERAS, JORGE ALBERTO**

**A 044-176-076**

**Date of this notice: 1/14/2014**

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

schwarzA  
User team: Docket

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Falls Church, Virginia 20530

**CONTRERAS, JORGE ALBERTO  
A044-176-076  
PLYMOUTH CTY HOC  
26 LONG POND RD  
PLYMOUTH, MA 02360**

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

**Name: CONTRERAS, JORGE ALBERTO      A 044-176-076**

**Date of this notice: 1/14/2014**

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Guendelsberger, John

schwarzA  
Userteam: Docket

Falls Church, Virginia 20530

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File: A044 176 076 – Boston, MA

Date: JAN 14 2014

In re: JORGE ALBERTO CONTRERAS a.k.a. Alberto Contreras a.k.a. Raul Colon

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jeffrey B. Rubin, Esquire

In an oral decision dated September 10, 2013, an Immigration Judge denied the respondent's request for a continuance; found him removable; determined that he did not demonstrate eligibility for any relief from removal; and ordered him removed from the United States to the Dominican Republic.<sup>1</sup> The respondent appealed from that decision. The appeal will be dismissed.

The respondent was found removable as charged, as convicted of an aggravated felony under section 237(a)(2)(A)(iii) of the Act, 8 U.S.C. § 1227(a)(2)(A)(iii), in conjunction with section 101(a)(43)(B) of the Act, 8 U.S.C. § 1101(a)(43)(B). As substantiated by conviction documents, he has an October 2004 Massachusetts conviction for "possession with intent to distribute/cocaine." For that crime, he was sentenced to imprisonment of 12 months. *See* Ex. 2. He was admitted to the United States as a lawful permanent resident on or about July 11, 1993. We find correct the Immigration Judge's conclusions concerning the respondent's removability and ineligibility for removal relief.

On appeal, the now 29-year-old respondent argues that the Immigration Judge should have granted him an additional continuance of his removal proceedings. He asserts that his conviction is invalid because he entered a defective guilty plea due to ineffective assistance from his criminal attorney.

The decision to grant or deny a continuance is within the discretion of the Immigration Judge, and good cause must be shown for a continuance. *See Matter of Perez-Andrade*, 19 I&N Dec. 433 (BIA 1997); *Matter of Sibrun*, 18 I&N Dec. 354 (BIA 1983); 8 C.F.R. § 1003.29. In this case, the Immigration Judge afforded the respondent two prior continuances, from August 27, 2013, until September 3, 2013; and from September 3, 2013, until September 10, 2013. The first continuance was granted so that the respondent could locate an immigration lawyer to represent him. The second continuance was given for the purpose of attorney case preparation. At the

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<sup>1</sup> The proceedings before the Immigration Judge in this matter were completed in Boston, Massachusetts, through video conference pursuant to section 240(b)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(2)(A)(iii).

third and final hearing on September 10, 2013, the respondent's attorney informed the Immigration Judge that the respondent was seeking post-conviction relief but would not apply for any relief from removal. See I.J. at 2; Tr. at 7-8. We agree with the Immigration Judge's denial of a third continuance, under the circumstances of this case.

Concerning the validity of the 2004 conviction, the fact that the respondent may be pursuing post-conviction relief in the form of a collateral attack on such conviction in state criminal court does not affect its finality for federal immigration purposes. See *Matter of Adetiba*, 20 I&N Dec. 506 (BIA 1992). The respondent indicates on appeal that his petition for post-conviction relief remains pending in the criminal court. In *Padilla v. Kentucky*, 559 U.S. 356 (2010), the United States Supreme Court ruled that a lawyer representing an alien in connection with a guilty plea to a criminal offense has a constitutional duty to advise the alien about the risk of deportation arising from the conviction. However, the respondent's speculation that his conviction might be invalid, including in light of *Padilla v. Kentucky*, *supra*, does not change the finality for immigration purposes of that conviction, unless and until it were to be overturned by a criminal court. See *Matter of Ponce de Leon*, 21 I&N Dec. 154 (A.G. 1997; BIA 1997, 1996). The respondent thus stands convicted of the aforementioned 2004 crime.

Consistent with the Immigration Judge's determinations, the respondent's 2004 conviction for "possession with intent to distribute/cocaine" is for a drug trafficking offense that is both an aggravated felony and a particularly serious crime. As an alien who has at least one conviction for a particularly serious crime, the only form of relief for which the respondent is potentially eligible is deferral of removal under the Convention Against Torture ("CAT"). Since he has been convicted of at least one offense that is a particularly serious crime as well as an aggravated felony, he is statutorily ineligible for asylum and withholding of removal under the Act. See sections 208(b)(2)(A)(ii), 208(b)(2)(B)(i), and 241(b)(3)(B) of the Act, 8 U.S.C. §§ 1158(b)(2)(A)(ii), 1158(b)(2)(B)(i), and 1231(b)(3)(B); 8 C.F.R. §§ 1208.16(c)(4) and 1208.16(d)(2) and (3); see also *Matter of Y-L-, A-G-*, and *R-S-R-*, 23 I&N Dec. 270 (A.G. 2002). The respondent has not disputed that the aforementioned conviction is for both an aggravated felony and a particularly serious crime. Regarding CAT protection, he has not expressed any fear of torture in the Dominican Republic, either before the Immigration Judge or on appeal. At his final hearing where he was represented by counsel, he told the Immigration Judge that he did not wish to apply for removal relief, and he has not requested any such relief on appeal.<sup>2</sup>

The respondent has over 20 years as a lawful permanent resident of the United States. To the extent that he seeks humanitarian relief to enable him to remain in this country, this Board and the Immigration Judges have limited jurisdiction and can grant only those forms of relief from removal that are expressly authorized by Congress. See *Matter of Medina*, 19 I&N Dec. 734 (BIA 1988). We have no power to grant equitable remedies or to confer general humanitarian relief on aliens. If the respondent wishes to obtain relief on humanitarian grounds, he must pursue such relief with the Department of Homeland Security.

<sup>2</sup> In the recent decision of *Moncrieffe v. Holder*, \_\_\_ U.S. \_\_\_, 133 S.Ct. 1678 (2013), the United States Supreme Court held that, if an alien's conviction for a marijuana distribution offense fails to establish that the offense involved either remuneration or more than a small amount of marijuana, it is not an aggravated felony under the Act. In the present case, cocaine is the drug involved in the the respondent's 2004 conviction is for "possession with intent to distribute."

Finally, the respondent has asked for a remand. *See* Br. at 1, 4. We do not find that a remand is warranted in this case, and we deny the remand request.

Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.

  
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FOR THE BOARD

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

File: A044-176-076

September 10, 2013

In the Matter of

JORGE ALBERTO CONTRERAS

RESPONDENT

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)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGES: Immigration & Nationality Act (INA) Section 237(a)(2)(A)(iii) in that after admission, the respondent was convicted of an aggravated felony relating to the eillicit trafficking in a controlled substance.

APPLICATIONS: Continuance.

ON BEHALF OF RESPONDENT: KYUNG BANG

ON BEHALF OF DHS: MARIO J. STURLA

ORAL DECISION OF THE IMMIGRATION JUDGE

Removal proceedings against the respondent, Jorge Alberto Contreras, were initiated on August 21, 2013, 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 New York on or about July 11, 1993 as a lawful permanent resident; and that on October 5, 2004, he was convicted in Lawrence, Massachusetts for the offense of possession with intent to distribute cocaine. He was charged with removability pursuant to INA Section 237(a)(2)(A)(iii). See Exhibit 1.

On the issue of removability, the respondent submitted written pleadings on September 10, 2013. In these pleadings, the respondent admitted to the first three

allegations in the Notice to Appear, denied the fourth allegation, and denied removability. The respondent sought no form of relief other than a continuance to pursue a collateral attack on the respondent's conviction. See Exhibit 3. The Court also received into evidence at an earlier hearing, Exhibit 2, initially marked for identification but now accepted by the Court as a full exhibit. Exhibit 2 reflects that on October 5, 2004, the respondent was convicted, pursuant to his pleas of guilty, to the offense of possession with intent to distribute cocaine. Based upon the written pleadings at Exhibit 3 as well as the conviction record at Exhibit 2, this Court finds by clear and convincing and unequivocal evidence that the allegations set forth in the Notice to Appear are true and the charge of removability is sustained.

The respondent is seeking a continuance in order to pursue a collateral attack on his 2004 conviction. The respondent is seeking no other form of relief from removal. The Court will not continue these cases for a collateral attack and inasmuch as the respondent's conviction is still valid and final, this Court finds that the charge of removability is sustained. The respondent is not seeking any other form of relief and therefore the Court will deny the respondent's request for a continuance to pursue a collateral attack and will order that he be removed from the United States and returned to the Dominican Republic.

The following orders shall issue:

ORDER

IT IS HEREBY ORDERED that the respondent is to be removed from the United States and returned to the Dominican Republic.

**Please see the next page for electronic**

**signature**

September 10, 2013

STEVEN F. DAY  
Immigration Judge

Immigrant & Refugee Appellate Center | [www.irac.net](http://www.irac.net)



//s//

Immigration Judge STEVEN F. DAY

days on October 2, 2013 at 10:22 AM GMT