



**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 22041

**DHS/ICE Office of Chief Counsel - SFR  
P.O. Box 26449  
San Francisco, CA 94126-6449**

**Name: PHAN, MINH**

**A 025-085-074**

**Date of this notice: 12/30/2016**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Adkins-Blanch, Charles K.

9/16/17  
User team: Docket

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Falls Church, Virginia 22041

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File: A025 085 074 – San Francisco, CA

Date:

DEC 30 2016

In re: MINH PHAN

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Larissa T. Wilson  
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] -  
Crime involving moral turpitude

APPLICATION: Termination

The Department of Homeland Security (DHS) has appealed from the Immigration Judge's decision dated May 2, 2016, granting the respondent's motion to terminate proceedings. The appeal will be dismissed.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under a clearly erroneous standard. *See* 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews questions of law, discretion, and judgment, and all other issues raised in an Immigration Judge's decision de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).


As found by the Immigration Judge, the respondent is a native and citizen of Vietnam. On April 18, 2012, the respondent was convicted of a felony "driving in willful or wanton disregard for safety of persons or property while fleeing from pursuing police officer" in violation of California Vehicle Code section 2800.2. The respondent was sentenced to a 2 year term of imprisonment.

We affirm the Immigration Judge's decision to terminate the proceedings based upon a determination that the DHS did not meet its burden of proving that the respondent's conviction was for a crime involving moral turpitude. We agree with the Immigration Judge that a violation of Cal. Vehicle Code § 2800.2 is distinguishable from a similarly-worded statute in *Matter of Ruiz-Lopez*, 25 I&N Dec. 551 (BIA 2011), *petition for review denied*, 682 F.3d 513 (6th Cir. 2012), because the phrase "willful or wanton disregard" is expansively defined in the statute with reference to another provision of the California Vehicle Code that includes traffic infractions and other conduct that does not necessarily rise to the level of conduct involving moral turpitude (I.J. at 2). Inasmuch as the respondent did not enter a plea that included admission to the facts in the complaint against him, the Immigration Judge correctly found that a modified categorical analysis of the conviction record could not be utilized to determine if the respondent's specific

conduct would constitute a crime involving moral turpitude. Under the circumstances, we agree with the Immigration Judge the evidence presented is insufficient to sustain the charge that the respondent has been convicted of a crime involving moral turpitude.

Accordingly, the appeal will be dismissed.

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  
SAN FRANCISCO, CALIFORNIA

File: A025-085-074

May 2, 2016

In the Matter of

MINH PHAN

RESPONDENT

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)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGES: Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act for  
committing a crime involving moral turpitude

APPLICATIONS:

ON BEHALF OF RESPONDENT: MAXIMILIANO GARDE  
Law Office of Peter Duong  
584 Castro Street, #290  
San Francisco, California 94114

ON BEHALF OF DHS: LARISSA WILSON, Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent, who is a native and citizen of Vietnam, was placed in removal proceedings in 2014 and served with a Notice to Appear alleging that he is removable under Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act as an alien who has been convicted or who admits having committed the acts constituting a crime involving moral turpitude. In this case, the respondent is alleged to have been convicted of a felony violation of California Vehicle Code Section 2800.2 and sentenced

to two years in prison. If this were a crime involving moral turpitude, the petty offense exception would not apply due to the felony nature of the conviction.

The Court requested briefing by both the Department and respondent on this issue. The conviction records, which will be Exhibit 1 to the record of proceedings, do demonstrate that the respondent was, in fact, convicted as charged in the Notice to Appear. However, the Court finds that Vehicle Code Section 2800.2 is not categorically a crime involving moral turpitude because the code section allows the mens rea requirement to be met simply by virtue of an individual committing three violations of the Vehicle Code. Therefore, while it appears from the text of the statute that the necessary mens rea for a crime involving moral turpitude is met in that it appears to require wanton and willful disregard for the safety of persons and property, the statute then goes on and provides that willful and wanton disregard may be found simply by virtue of finding that the driver committed three Vehicle Code violations in the context of failing to yield to a police officer.

The Department of Homeland Security presented an unpublished decision in which the majority did, in fact, find that 2800.2 constituted a crime involving moral turpitude. The majority based its decision on Ruiz-Lopez v. Holder, which is a decision from the Sixth Circuit in which they reviewed a provision of the Vehicle Code of the State of Washington. The statute in that case, however, is markedly different than the statute in California in that it does not allow the willful and wanton disregard to be established through three Vehicle Code violations. In this case, this Court agrees with the dissent in the Ninth Circuit decision, which was written by Senior District Judge Ponsor, and calls into question the majority's decision because the California statute and the Washington statute are not sufficiently similar to warrant a following of the Sixth Circuit decision in this case.

It is the finding of this Court that a violation of California Vehicle Code Section 2800.2 cannot be categorically a crime involving moral turpitude because one can be found to have willful and wanton disregard for the safety of persons and property by committing three Vehicle Code offenses which require no mens rea at all in their commission.

The Court also reviewed the complaint and the other conviction records that were submitted by the Department, and there is nothing in those records to suggest that the conviction in this case was the result of a true finding that the respondent engaged in willful and wanton disregard of the safety of others as opposed to having violated three provisions of the Vehicle Code. Since a modified categorical review of this statute does not permit the Court to find that the respondent has committed a crime involving moral turpitude, the Court will overrule the charge against the respondent.

ORDER

IT IS HEREBY ORDERED that these proceedings are terminated with prejudice.

**Please see the next page for electronic**

**signature**

ALISON E DAW  
Immigration Judge

//s//

Immigration Judge ALISON E DAW

dawa on July 25, 2016 at 3:07 PM GMT

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