



**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*

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Salazar & Cook  
252 N. Fulton Street  
Fresno, CA 93701**

**DHS/ICE Office of Chief Counsel - EAZ  
P.O. Box 25158  
Phoenix, AZ 85002**

**Name: MARTINEZ-BANUELOS, SALOM...    A 044-343-239**

**Date of this notice: 8/22/2013**

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  
Pauley, Roger  
Greer, Anne J.

**lulsegas  
Userteam: Docket**

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



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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**MARTINEZ-BANUELOS, SALOMON  
A044-343-239  
1705 E. HANNA ROAD  
ELOY, AZ 85131**

**DHS/ICE Office of Chief Counsel - EAZ  
P.O. Box 25158  
Phoenix, AZ 85002**

**Name: MARTINEZ-BANUELOS, SALOM...      A 044-343-239**

**Date of this notice: 8/22/2013**

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  
Pauley, Roger  
Greer, Anne J.

**Iulsegas  
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Falls Church, Virginia 22041

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File: A044 343 239 – Eloy, AZ

Date:

AUG 22 2013

In re: SALOMON MARTINEZ-BANUELOS a.k.a. Salmon Martinez-Banuelos

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Camille K. Cook, Esquire

ON BEHALF OF DHS: David C. Whipple  
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] -  
Convicted of controlled substance violation

APPLICATION: Termination; continuance

The respondent appeals from an Immigration Judge's March 28, 2013, decision ordering him removed from the United States. The Department of Homeland Security ("DHS") opposes the appeal. The record will be remanded.

The respondent is a native and citizen of Mexico and a lawful permanent resident of the United States. According to the Immigration Judge, the respondent is removable under section 237(a)(2)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(B)(i), because he was convicted in 2010 of possessing drug paraphernalia in violation of section 11364 of the California Penal Code. On the present record, we are unable to affirm that determination.

Section 237(a)(2)(B)(i) provides in relevant part that "[a]ny alien who at any time after admission has been convicted of a violation of ... any law or regulation of a State ... relating to a controlled substance ..., other than a single offense involving possession for one's own use of thirty grams or less of marijuana, is deportable." Although section 11364 of the California Penal Code is a law relating to a controlled substance within the meaning of section 237(a)(2)(B)(i), *see Estrada v. Holder*, 560 F.3d 1039, 1042 (9th Cir. 2009),<sup>1</sup> the Immigration Judge's decision is incomplete because it contains no findings or analysis with respect to the applicability of the "possession of marijuana for personal use" exception. *See Matter of Davey*, 26 I&N Dec. 37, 39-41 (BIA 2012) (holding that section 237(a)(2)(B)(i)'s "possession of marijuana for personal use" exception calls for a circumstance-specific inquiry in which the DHS bears the burden of proof).

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<sup>1</sup> Despite the respondent's appellate argument to the contrary, the Supreme Court's intervening decision in *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013), is inapposite because it pertained solely to the Act's "aggravated felony" provisions, which are not implicated here.

In light of the foregoing, the matter will be remanded on an open record for supplemental factfinding and for the entry of a new decision. *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). If the respondent is found removable on remand, the Immigration Judge shall inform the respondent of any relief for which he is apparently eligible and give him a reasonable opportunity to file applications therefor. 8 C.F.R. § 1240.11(a)(2).

ORDER: The Immigration Judge's decision is vacated and the record is remanded for further proceedings and for entry of a new decision consistent with the foregoing opinion.

  
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
ELOY, ARIZONA

File: A044-343-239

March 28, 2013

In the Matter of

SALOMON MARTINEZ-BANUELOS

RESPONDENT

)  
) IN REMANDED REMOVAL PROCEEDINGS  
)  
)

CHARGES: Section 237(a)(2)(B)(i) of the Immigration and Nationality Act -  
convicted of a violation of law relating to a controlled substance.

APPLICATIONS: None.

ON BEHALF OF RESPONDENT: CAMILLE K. COOK, Esquire  
LAZARO SALAZAR

ON BEHALF OF DHS: DAVID C. WHIPPLE  
Assistant Chief Counsel

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

This matter is before this Court based upon a remand by the Board of Immigration Appeals in a decision dated October 15, 2012. See Exhibit R-1. The case was remanded after it appears that respondent had proffered evidence to the Board that a state criminal court had granted his request for post-conviction relief. He apparently had been granted a motion to withdraw his guilty plea, that allowed him to enter a not guilty plea and schedule the respondent's arraignment on the pending criminal charges. The Government had not opposed the motion to reopen, and the Government

separately moved to remand these proceedings based upon their assertion that respondent was found guilty of a drug paraphernalia offense in 2010. The Government, however, was opposed to the case being terminated.

Subsequent to the remand, respondent's counsel filed a motion to terminate these proceedings, asserting that the respondent does not have any criminal conviction that would serve as the basis for the charge of removability. However, the Government submitted conviction documents contained in R-5 and R-7, that established that respondent was convicted on August 31, 2010, in the Superior Court of California, Kern County, for a violation of California Health and Safety Code Section 11364, for which he was sentenced to 15 days jail, and also given 3 years of probation. Based upon those conviction documents, the Court found that the additional factual allegation as brought by the Government contained in R-4, had been established and the Court sustained the additional allegation., Based upon the Court sustaining of that additional allegation, respondent's motion to terminate these proceedings was denied.

From the previous record, it appears that this respondent had previously applied for, and had been granted, the relief of cancellation of removal for certain lawful permanent residents. As such, the respondent is statutorily ineligible to seek that relief a second time.

This matter had been continued subsequent to the remand on several occasions for several different reasons. At this last Master Calendar conducted on March 28, 2013, respondent's counsel appearing telephonically, could not articulate to the Court any other form of relief that the respondent will be eligible for or will be seeking at this time. As such, the Court finds that the respondent is not pursuing any other form of relief. Accordingly, the following orders are entered.

**ORDER**

IT IS HEREBY ORDERED that the single charge of removability under Section 237(a)(2)(B)(i) is sustained.

**ORDER**

IT IS HEREBY ORDERED that the respondent be removed from the United States to Mexico.

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LINDA I. SPENCER-WALTERS  
United States Immigration Judge

CERTIFICATE PAGE

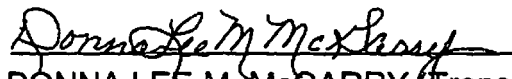
I hereby certify that the attached proceeding before JUDGE LINDA I. SPENCER-WALTERS, in the matter of:

SALOMON MARTINEZ-BANUELOS

A044-343-239

ELOY, ARIZONA

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

  
DONNA LEE M. McGARRY (Transcriber)

FREE STATE REPORTING, Inc.-2

MAY 27, 2013

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(Completion Date)