



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*

**Cristol, Melanie
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071**

**DHS/ICE Office of Chief Counsel - ELC
1115 N. Imperial Ave.
El Centro, CA 92243**

Name: DELA CRUZ, NOWEL Q

A 057-056-093

Date of this notice: 2/8/2013

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:
Holmes, David B.

Userteam: Docket

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EL CENTRO SERV. PROC. CENTER
1115 N. IMPERIAL AVENUE
EL CENTRO, CA 92243

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Name: DELA CRUZ, NOWEL Q

A 057-056-093

Date of this notice: 2/8/2013

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:
Holmes, David B.

Userteam: Donna Carr

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Falls Church, Virginia 22041

File: A057 056 093 – Imperial, CA

Date: FEB -8 2013

In re: NOWEL Q. DELA CRUZ a.k.a. Nowel Quito-Dela Cruz

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Melanie Cristol, Esquire

ON BEHALF OF DHS: William P. Hollerich
Assistant Chief Counsel

APPLICATION: Reopening

This case was previously before the Board on March 27, 2009, when we affirmed without opinion an Immigration Judge's decision finding the respondent removable as charged. The Department of Homeland Security (DHS) has now filed the instant timely motion to reopen the removal proceedings, based on the fact that the 2007 conviction for inflicting corporal injury on a spouse, which formed the basis of the respondent's removability, has been vacated due to ineffective assistance of counsel. The DHS asks the Board to remand this matter to the Immigration Judge so that it may lodge an additional charge of removability against the respondent, based on an independent and still viable 2007 conviction for contempt of court for willful violation of a protection order. The respondent agrees that reopening is warranted, but asks the Board instead to terminate these proceedings without prejudice so that he may be released from DHS custody more expeditiously. The DHS's motion will be granted, and the record will be remanded.

Considering the evidence proffered with the parties' filings, the proceedings are reopened. *See Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003) (holding that a conviction that has been vacated by the criminal court based upon a procedural or substantive defect in the underlying proceedings is no longer a conviction for immigration purposes); *see also Padilla v. Kentucky*, 130 S.Ct. 1473 (2010) (holding that a criminal lawyer representing a non-citizen in connection with a guilty plea has a constitutional duty to advise the defendant that conviction may pose a risk of deportation). Inasmuch as the DHS has stated unequivocally that it intends to lodge an additional charge of removability against the respondent, we find it more prudent to remand this matter to the Immigration Judge, rather than terminate proceedings without prejudice. The respondent may still pursue release from custody from the DHS and/or the Immigration Court, as appropriate. *See generally* section 236 of the Immigration and Nationality Act, 8 U.S.C. § 1226; 8 C.F.R. §§ 1003.19, 1236.1.

Accordingly, the following orders will be entered.

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

FURTHER ORDER: The record is remanded to the Immigration Court for proceedings not inconsistent with the foregoing decision.

A handwritten signature in black ink, appearing to be 'me' followed by a long horizontal stroke.

FOR THE BOARD