



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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**ARELLANO AGUILAR, OBED
A205-316-952
ADELANTO DETENTION FACILITY
10400 RANCHO RD
ADELANTO, CA 92301**

**DHS/ICE - Office of Chief Counsel
10400 Rancho Road
Adelanto, CA 92301**

Name: ARELLANO AGUILAR, OBED

A 205-316-952

Date of this notice: 4/28/2017

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

Sincerely,

Cynthia L. Crosby
Acting Chief Clerk

Enclosure

Panel Members:
Malphrus, Garry D.
Greer, Anne J.
Mullane, Hugh G.

Userteam: Docket

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Falls Church, Virginia 22041

File: A205 316 952 – Adelanto, CA

Date: APR 28 2017

In re: OBED ARELLANO AGUILAR

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Redetermination of custody status

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's December 20, 2016, order denying his request for a change in custody status upon determining that he is subject to mandatory detention under section 236(c) of the Immigration and Nationality Act, 8 U.S.C. § 1226(c). The reasons for the Immigration Judge's order are contained in a Bond Memorandum dated January 19, 2017, in which the Immigration Judge found that the respondent was convicted of two crimes involving moral turpitude under section 237(a)(2)(A)(ii) of the Act, rendering him subject to mandatory custody under section 236(c)(1)(B) of the Act. The respondent's appeal will be sustained and the record will be remanded for further proceedings.

On appeal, the respondent argues that the Immigration Judge erred in declining to release him on bond and asserts that he is not subject to mandatory custody. An alien may show that he is "not properly included" within the mandatory detention class by establishing that the DHS is "substantially unlikely" to prove a removal charge subjecting him to mandatory custody. *Matter of Joseph*, 22 I&N Dec. 799, 806 (BIA 1999). Here, the Immigration Judge did not consider whether the DHS was substantially unlikely to be able to prove a charge of removal arising under section 237(a)(2)(A)(ii) of the Act, but rather found, relying on our decision in *Matter of Almanza-Arenas*, 24 I&N Dec. 771 (BIA 2009),¹ that a violation of section 10851(a) of the California Vehicle Code "is a crime involving moral turpitude."

However, subsequent to *Matter of Almanza-Arenas*, *supra*, the Ninth Circuit determined that section 10851(a) of the California Vehicle Code is not divisible, and that the statute is overbroad when compared to a generic crime involving moral turpitude. *See Almanza-Arenas v. Lynch*,

¹ In this decision, we noted that the Immigration Judge had found the California statute at issue to be divisible—i.e., covering both "joyriding," consisting of a general intent crime to use another's vehicle without permission and "actual theft," which requires a specific intent to deprive an owner of title to or possession of a vehicle, either temporarily or permanently. *See Matter of Almanza-Arenas*, *supra*, at 773. Without addressing the merits of this determination, we affirmed the Immigration Judge's finding that the alien had failed to demonstrate his eligibility for relief from removal because he failed to show that he was convicted only for joyriding. *Id.* at 775-77.

815 F.3d 469, 482 (9th Cir. 2015). As such, the Immigration Judge's apparent conclusion that a conviction arising under section 10851(a) of the California Vehicle Code categorically involves moral turpitude is without support.

Further in *Matter of Diaz-Lizaraga*, 26 I&N Dec. 847 (BIA 2016) we concluded that a theft crime should be considered to involve moral turpitude if it involved a substantial—rather than a de minimus—erosion of an owner's property rights. *Id.* at 850. The decision does not change our long-standing view of joyriding as a non-morally turpitudinous crime. *Cf. id.* at 851 & n. 10. Given all of the above, we find that the respondent is not subject to section 236(c) of the Act, as it is substantially unlikely that the DHS will prove that he has been convicted of a crime involving moral turpitude. *See Matter of Joseph, supra.*

Given the above, we will remand this record for further analysis of whether, under section 236(a) of the Act, the respondent poses a danger to the community or a flight risk.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded for further proceedings consistent with this order.



FOR THE BOARD

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ADELANTO, CALIFORNIA**

File Number:	A 205 316 952)	DETAINED
)	
In the Matter of:)	
)	
	ARELLANO AGUILAR)	IN BOND PROCEEDINGS
	Obed,)	
)	
Respondent.)	

ON BEHALF OF THE RESPONDENT:

Pro Se, c/o Custodial Officer
Adelanto Detention Facility
10250 Rancho Road
Adelanto, California 92301

ON BEHALF OF THE DEPARTMENT:

Jack Seal, Assistant Chief Counsel
U.S. Department of Homeland Security
10250 Rancho Road
Adelanto, California 92301

BOND MEMORANDUM AND ORDER OF THE IMMIGRATION JUDGE

I. Facts and Procedural History

Obed Arellano Aguilar ("Respondent") is a native and citizen of Mexico. On May 25, 2012, the U.S. Department of Homeland Security ("Department") initiated removal proceedings against Respondent by filing a Notice to Appear ("NTA") with the Immigration Court. *See* 8 C.F.R. § 1003.14(a). The NTA charged Respondent as removable pursuant to INA section 212(a)(6)(A)(i), as being presented in the United States without being admitted or paroled. On June 26, 2013, the case was administratively closed. On November 28, 2016, the case was placed back on the Court's docket, which occurred after Respondent came into the custody of the Department.

On December 20, 2016, the Court conducted a custody redetermination hearing. During the hearing, the Department presented evidence of the Respondent's recent vehicle theft convictions. Exhs. B-2, B-3. Specifically, on September 1, 2015, Respondent was convicted in the Superior Court of California, County of San Bernardino, for the offense of vehicle theft, in violation of California Vehicle Code ("CVC") section 10851. Exh. B-3. On October 26, 2015, Respondent was again convicted in the San Bernardino Superior Court of vehicle theft, in violation of CVC section 10851. Exh. B-2. During the hearing, Respondent admitted that he went straight from the county jail to the detention center in Adelanto. After considering all the foregoing, the Court found that it lacked jurisdiction to grant bond because Respondent was subject to mandatory detention.

On January 13, 2017, the Respondent appealed the Court's custody determination decision to the Board of Immigration Appeals ("Board"). The Court provides the present Memorandum to facilitate review of the Respondent's appeal. See *Immigr. Ct. Prac. Man.*, Chap. 9.3(e)(vii) (Feb. 4, 2016).

II. Law & Analysis

An alien may request a bond redetermination hearing before the Court at any time before the issuance of an administratively final order of removal. 8 C.F.R. § 1236.1(d). The Court is authorized to detain, release, or set bond for the alien pursuant to INA section 236. *Id.* However, the Court lacks jurisdiction to set a bond for certain mandatory detainees enumerated in INA section 236(c)(1). 8 C.F.R. § 1003.19(h)(2)(i)(D). One such class of mandatory detainees are aliens who are deportable due to the commission of two crimes involving moral turpitude, as stated in INA section 237(a)(2)(A)(ii). INA § 236(c)(1)(B).

In the present matter, the Respondent was twice convicted of vehicle theft, which is a crime involving moral turpitude. See *Matter of Almanza-Arenas*, 24 I&N Dec. 771 (BIA 2009). As such, the Court found that Respondent was ineligible for bond because he was a mandatory detainee. The Court also noted that because the Respondent was placed in immigration custody immediately after he was released from criminal custody, he was ineligible for relief pursuant to the class action under *Preap v. Johnson*, No. 13-CV-5754 YGR (N.D. Cal May 15, 2014) (order granting permanent injunction and holding that aliens who have committed an offense enumerated in INA section 236(c)(1) "must also be detained by the Government at the time they are released from criminal custody in order to be subject to the mandatory detention provision").

Based on the foregoing, the Court entered the following order:

ORDER

IT IS HEREBY ORDERED that Respondent's request for custody redetermination be **DENIED**.

DATE: January 19, 2017


James M. Left
Immigration Judge