THE LAW OFFICES OF

NORTON TOOBY

Crimes & Immigration Newsletter

January, 2017

This Newsletter contains selected recent developments in criminal immigration law occurring during January, 2017. The full version includes *all* monthly updates, and is available here.

The coded references following each case summary refer to the title and section number in our practice manuals in which the subject of the recent development is discussed more fully. For example, CD 4.19 refers to N. TOOBY & J. ROLLIN, CRIMINAL DEFENSE OF IMMIGRANTS § 4.19 (2007), with monthly updates online at NortonTooby.com.

Andrew J. Phillips, Esq.
Editor

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RECENT DEVELOPMENTS

Resources

EXECUTIVE ORDERS RELATING TO IMMIGRATION

The new Administration has so far announced three Executive Orders in the past week that impact immigrants and refugees. The interior enforcement order includes plans to arrest and detain more people, hire more immigration enforcement officers, enlist state and local enforcement agencies, and punish localities that don't cooperate with immigration enforcement. The border security order includes plans to build a border wall and detention centers, hire additional enforcement officers, and remove more people more quickly. Finally, the order to ban entry includes temporary bans on nationals from seven Muslim-majority countries and refugees from around the world, and an indefinite ban on Syrian refugees. Advocates are organizing, litigating, monitoring compliance with court orders, and creating training and public education materials. We want to alert you to resources on the Executive Orders, available through the Immigration Advocates Network (IAN), our partners, and other advocates.

Additional resources on the Executive Orders and the response, including the text of the orders and documents to help monitor compliance with the district court orders, are

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Consultations

Since 1989, the Law Offices of Norton Tooby have offered expert advice and highly successful services to immigration attorneys, criminal attorneys, and clients. Our nationwide law practice assists foreign nationals in avoiding adverse immigration consequences of crimes anywhere in the country.

Immigration Lawyers
We investigate criminal histories nationwide, and analyze them to provide (a) cutting-edge immigration-court arguments why a given conviction does not trigger removal, and (b) post-conviction efforts to vacate criminal convictions to avoid immigration consequences.

Criminal Lawyers
We investigate criminal and immigration histories nationwide and offer strategies for obtaining (a) immigration-safe dispositions, and (b) post-conviction relief to eliminate immigration damage.

Individuals
We investigate your situation to (a) advise your criminal lawyer what plea will avoid deportation, (b) advise your immigration lawyer on new immigration-court arguments to avoid removal, and (c) erase convictions in criminal court to avoid immigration damage.

Testimonials:

"If you are an immigration lawyer with a defendant who has criminal issues, you only need to know two words: Norton Tooby." - Dan Kowalski

"Brilliant legal strategies."
-Ann Benson, Directing Attorney, Washington Defender Association's Immigration Project

For Mr. Tooby's biography click here.

Interested in our services? Contact our office at (510) 601-1300 or submit our Intake Form to begin the preliminary review process. Once we receive your Intake Form, we will contact you and let you know if we feel we can help. Consultations can be in person or by phone. Visit www.NortonTooby.com to download the Intake Form.

available at
https://www.immigrationadvocates.org/nonprofit/library/folder.630302-Executive_Orders_and_Response_2017.

National Immigration Forum (NIF)
The NIF summarizes the three executive orders at:

http://immigrationforum.org/blog/president-trumps-executive-order-on-interior-enforcement-summary/ (interior enforcement);

http://immigrationforum.org/blog/president-trumps-executive-order-on-border-security-summary/ (border security); and

http://immigrationforum.org/blog/president-trumps-executive-order-restricting-refugee-resettlement-and-visa-processing-summary/ (entry bans).
CD4:15.8

RESOURCES – INDEX OF UNPUBLISHED BIA DECISIONS

The Immigrant & Refugee Appellate Center, LLC, has released the 2017 edition of its Index of Unpublished BIA Decisions. The Index contains links to more than 1,500 unpublished decisions selected for their potential to assist noncitizens in removal proceedings. Subscribers receive updates each month with the latest decisions, as well as a discount on IRAC's same-day BIA filing service. For individual purchasers, the cost of the Index is $75. If you would like to purchase the Index, please email Ben Winograd at bwinograd@irac.net and he will send you an invoice that can be paid online. Group pricing is also available for firms, clinics, and non-profit organizations. To preview the Index and see a list of FAQs, visit http://www.irac.net/unpublished/index/.
Thanks to Ben Winograd

Practice Advisories

IMMIGRATION EXECUTIVE ORDER – ENFORCEMENT PRIORITIES

Sec. 5 of the Executive Order regarding Enforcement Priorities states:

"In executing faithfully the immigration laws of the United States, the Secretary of Homeland Security (Secretary) shall prioritize for removal those aliens described by the Congress in sections 212(a)(2), (a)(3), and (a)(6)(C), 235, and 237(a)(2) and (4) of the INA (8 U.S.C. 1182(a)(2), (a)(3), and (a)(6)(C), 1225, and 1227(a)(2) and (4)), as well as removable aliens who:

(a) Have been convicted of any criminal offense;

(b) Have been charged with any criminal offense, where such charge has not been resolved;

(c) Have committed acts that constitute a chargeable criminal offense;

(d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;

(e) Have abused any program related to receipt of public benefits;

(f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or

(g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-

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order-enhancing-public-safety-interior-united

CD4:15.8

where an oath is authorized or required by law."

CD4:19.81;AF:5.64, A.32, B.49;SH:7.90

BIA

AGGRAVATED FELONY – CRIME OF VIOLENCE – MAYHEM

Matter of Kim, 26 I&N Dec. 912 (BIA Jan. 31, 2017) (California conviction of mayhem, in violation of Penal Code § 203, which requires a malicious act that results in great bodily injury to another person, necessarily involves the use of violent force and is therefore categorically a crime of violence under 18 U.S.C. § 16(a)).

CD4:19.38;AF:5.20, A.14, B.9

AGGRAVATED FELONY – PERJURY – DEFINITION

Matter of Alvarado, 26 I&N Dec. 895 (BIA 2016) (California conviction of perjury, under Penal Code § 118, was an offense "relating to" the generic definition of perjury, even though it covered both oral and written statements; for aggravated felony purposes, perjury "requires that an offender make a material false statement knowingly or willfully while under oath or affirmation where an oath is authorized or required by law.")

Note: The BIA here altered the definition of "perjury," rejecting its prior holding in *Matter of Martinez-Recinos*, 23 I&N Dec. 175 (BIA 2001), that simply relied on 18 U.S.C. § 1621: "[T]he generic definition of the term 'perjury' . . . requires than an offender make a material false statement knowingly or willfully while under oath or affirmation

First Circuit

CONTROLLED SUBSTANCES OFFENSE – FEDERALLY LISTED CONTROLLED SUBSTANCE

Swaby v. Yates, ___ F.3d ___, (1st Cir. Jan. 30, 2017) (Rhode Island conviction of manufacturing, delivering, or possessing with intent to distribute a controlled substance, in violation of Rhode Island General Laws § 21-28-4.01(a)(4)(i), did not constitute a controlled substances conviction, for immigration purposes, since the Rhode Island drug schedules "included at the relevant time at least one drug – thenylfentanyl – not listed on the federal drug schedules); compare R.I. Gen. Laws § 21-28-2.08(e)(13), with 21 C.F.R. § 1308.11-1308.15.

CD4:21.34, 19.62;AF:5.44;SH:7.144, 7.69;

CONVICTION – NATURE OF CONVICTION – CATEGORICAL ANALYSIS – REALISTIC PROBABILITY

Swaby v. Yates, ___ F.3d ___ (1st Cir. Jan. 30, 2017) (where Rhode Island controlled substances definition clearly listed at least one substance that was not listed on the federal list, the realistic probability of prosecution issue has no relevance).

The Court stated: "*Duenas-Alvarez* made no reference to the state's enforcement practices. It discussed only how broadly the state criminal statute applied. In doing so, *Duenas-Alvarez* does make clear that to find that a state statute proscribes a broader

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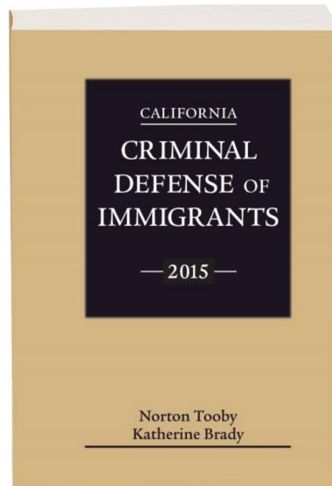
Publication Announcement

California Criminal Defense of Immigrants (CEB 2016)

By Norton Tooby & Katherine Brady



Details

We are happy to announce the publication of the new 600-page CEB book, California Crimes and Immigration, written by Norton Tooby and Katherine Brady.

This new practice manual was written specifically for California criminal defense attorneys, to assist them in representing foreign national defendants by (1) preventing the criminal disposition from triggering an immigration disaster, and (2) preventing the immigration status, and an immigration hold, from sabotaging all criminal dispositions that depend on the client actually emerging into freedom.

The heart of the book consists of nine chapters outlining "safe haven" pleas and sentences in general, and in specific areas such as Assault and Battery Offenses and Burglary Offenses. These chapters describe the specific immigration threats and their antidotes, making it easier for counsel to comply with the *Padilla* requirement of giving accurate immigration advice at plea, for a wide range of California offenses. In addition, safer alternate pleas are offered, that give equivalent convictions and sentences, but avoid damaging immigration consequences.

range of conduct than a federal crime 'requires more than the application of legal imagination to a state statute's language. It requires a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside the federal definition of the crime. *Duenas-Alvarez,* 549 U.S. at 193. But, that sensible caution against crediting speculative assertions regarding the potentially sweeping scope of ambiguous state law crimes has no relevance to a case like this. The state crime at issue clearly does apply more broadly than the federally defined offense. Nothing in *Duenas-Alvarez*, therefore, indicates that this state law crime may be treated as if it is narrower than it plainly is. Nor are we aware of any circuit court case, whether from this circuit or from any other, that supports the BIA's surprising view that, in applying the categorical approach, state law crimes should not be given their plain meaning." *Swaby v. Yates*, *supra*, ___ F.3d at ___.

CD4:16.6;AF:4.7;CMT3:6.6

Third Circuit

JUDICIAL REVIEW – MOTION TO REOPEN SUA SPONTE

Park v. Att'y Gen. US, __ F.3d __ (3d Cir. Jan. 17, 2017) (court has no jurisdiction to review petitions filed under 8 C.F.R. § 1003.2(a) requesting the BIA to reopen removal proceedings *sua sponte*; BIA discretion in this area is so broad, that the court has no meaningful way to review it).

CD4:15.34;PCN:10.15;AF:6.30;CMT3:10.31

Fourth Circuit

POST CON RELIEF – EFFECTIVE ORDER – EFFECT OF VACATUR – CONVICTION VACATED ON *PADILLA* CLAIM BEFORE *PADILLA* DECIDED

United States v. Moreno-Tapia, 848 F.3d 162 (4th Cir. Jan. 26, 2017) (North Carolina conviction that occurred prior to the Supreme Court's decision in *Padilla v. Kentucky*, that was later vacated on the basis of that case, is *still* a conviction for immigration purposes, since *Padilla* does not apply retroactively to convictions prior to March 31, 2010, when *Padilla* was decided).

NOTE: The court suggested that if the decision had been vacated on any reason other than the holding of *Padilla*, a different analysis would apply. This holding, however, would be correct only if the ineffective assistance ground was the failure to give correct immigration advice at plea – the claim which *Chaidez* held not to be retroactive. If the claim presented was affirmative misadvice of the immigration consequences, *Chaidez* was inapplicable.

PCN:6.18

POST CON RELIEF – GROUNDS – *PADILLA* – FEDERAL COURT MAKES INDEPENDENT ASSESSMENT OF WHETHER CONVICTION VIOLATED *PADILLA* – IMMIGRATION OFFENSES – ILLEGAL REENTRY – POST-CONVICTION RELIEF – EFFECTIVE ORDER VACATING CONVICTION – *PADILLA*

United States v. Moreno-Tapia, ___ F.3d ___, 2017 WL 374739 (4th Cir. Jan. 26, 2017) (vacatur of North Carolina state conviction, based on *Padilla* violation alone, had no effect on illegal reentry conviction where illegal reentry sentence was enhanced on the basis of the vacated conviction, because *Padilla* was not retroactive to the date of the

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North Carolina plea, which was therefore not constitutionally invalid under federal law).

The court reasoned:

The primary question before us now is what effect the alleged constitutional deficiency in Moreno-Tapia's state convictions has on his subsequent prosecution for illegal reentry. We conclude that the alleged infirmity has no effect. Because *Padilla* does not apply retroactively to defendants like Moreno-Tapia, convicted before the case was decided, see *Chaidez v. United States*, 133 S. Ct. 1103, 1105 (2013), Moreno-Tapia's convictions remain valid today as a matter of federal law, and his attempt to collaterally attack his 2009 removal is unavailing on that ground alone.

NOTE: The court suggested that if the decision had been vacated on any reason other than the holding of *Padilla*, a different analysis would apply. This holding, however, would be correct only if the ineffective assistance ground was the failure to give correct immigration advice at plea – the claim which *Chaidez* held not to be retroactive. If the claim presented was affirmative misadvice of the immigration consequences, *Chaidez* was inapplicable.

PCN:6.18

Fifth Circuit

AGGRAVATED FELONY – SEXUAL ABUSE OF A MINOR – CHILD ENDANGERMENT

United States v. Solano-Hernandez, 847 F.3d 170 (5th Cir. Jan. 26, 2017) (New Jersey conviction of endangering the welfare of a child, under N.J. Stat. Ann. § 2C:24-4, did not constitute a "crime of violence," under U.S.S.G. § 2L1.2(b)(1)(A)(ii), for illegal re-entry sentencing purposes, since the statute includes simply harming a child which may be insufficiently violent).

CD4:19.89;19.36;AF:5.72, 5.18, A.38, B.73

CONVICTION – NATURE OF CONVICTION – RECORD OF CONVICTION – INDICTMENT

United States v. Solano-Hernandez, 847 F.3d 170 (5th Cir. Jan. 26, 2017) ("because Solano-Hernandez was actually convicted under a different statute, the indictment cannot be used to narrow the offense"); citing *United States v. Gonzalez–Ramirez*, 477 F.3d 310, 315 (5th Cir. 2007); *United States v. Turner*, 349 F.3d 833, 836 (5th Cir. 2003).

CD4:16.30;AF:4.29;CMT3:7.12

CONVICTION – NATURE OF CONVICTION – RECORD OF CONVICTION – JUDGMENT – REASONS FOR SENTENCE

United States v. Solano-Hernandez, 847 F.3d 170 (5th Cir. Jan. 26, 2017) (New Jersey statement of reasons for sentence, incorporated into the judgment, cannot form part of the record of conviction under the modified categorical analysis because "there is no indication that [the defendant] 'assented' to those facts… But if the judgment includes narrowing facts, the overriding requirement remains that they must be "explicit factual finding[s] by the trial judge *to which the defendant assented*." *Shepard*, 544 U.S. at 16, 125 S.Ct. 1254 (emphasis added). A sentencing court may not rely on facts merely because they appear in a judgment."); citing *Herrera–Alvarez*, 753 F.3d at 138; *Larin–Ulloa v. Gonzales*, 462 F.3d 456, 468–69 (5th Cir. 2006) ("Unlike the charging document, the guilty plea, or the factual basis for the plea confirmed by the defendant, sentencing reasons and factors do not simply define the charge and the defendant's guilty

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plea, but, instead, frequently refer to facts neither alleged nor admitted in court.").

CD4:16.32;AF:4.31;CMT3:7.12

Sixth Circuit

CRIMES OF MORAL TURPITUDE – AGGRAVATED ASSAULT

Lovano v. Lynch, 846 F.3d 815 (6th Cir. Jan. 20, 2017) (Ohio conviction of aggravated assault, under Ohio Revised Code § 2903.12(A)(1) ["No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly ... [c]ause serious physical harm to another or to another's unborn"], constituted a conviction for a crime of moral turpitude because it requires proof of intentionally causing serious physical harm, despite the additional element of provocation of the actor).

CD4:20.7, 20.12;CMT3:8.8, 8.12, 9.15, CHART

Ninth Circuit

AGGRAVATED FELONY – DRUG-TRAFFICKING OFENSE – SOLICITATION DOES NOT QUALIFY AS AGGRAVATED FELONY

Sandoval v. Yates, 847 F.3d 697 (9th Cir. Jan. 27, 2017) (Oregon conviction for delivery of a controlled substance under Oregon Revised Statutes § 475.992(1)(a), is not a categorical drug-trafficking aggravated felony, under INA § 101(a)(43)(B), 8 U.S.C. § 1101(a)(43)(B), since the Oregon statute includes mere solicitation, which is not punished under the Controlled Substances Act), citing *United States v. Fish*, 758 F.3d 1, 6 (1st Cir. 2014) (noting, outside the context of § 1227, but with reference to the categorical approach more generally, that "a state's definition of a crime is overbroad if its elements allow for a conviction without satisfying the elements Congress has provided to define the required predicate offense"); see also *United States v. Aparicio-Soria*, 740 F.3d 152, 158 (4th Cir. 2014) (en banc) ("We do not need to hypothesize about whether there is a 'realistic probability' that Maryland prosecutors will charge defendants engaged in [the broader conduct]; we know that they can because the state's highest court has said so."); *Ramos v. U.S. Att'y Gen.,* 709 F.3d 1066, 1071-72 (11th Cir. 2013) (*Duenas-Alvarez* does not require showing that the state "would use the [state] statute to prosecute conduct falling outside the generic definition ... when the statutory language itself, rather than 'the application of legal imagination' to that language, creates the 'realistic probability' that a state would apply the statute to conduct beyond the generic definition"); *Jean-Louis v. Att'y Gen.*, 582 F.3d 462, 481 (3d Cir. 2009) (finding the "realistic probability" test inapplicable where the statute's "elements ... are clear, and the ability of the government to prosecute a defendant under [the statute] is not disputed"); *United States v. Grisel*, 488 F.3d 844, 850 (9th Cir. 2007) (en banc) ("Where, as here, a state statute explicitly defines a crime more broadly than the generic definition, no 'legal imagination' is required to hold that a realistic probability exists that the state will apply its statute to conduct that falls outside the generic definition of the crime. The state statute's greater breadth is evident from its text." (quoting *Duenas-Alvarez*, 549 U.S. at 193)).

CD4:19.19;AF:5.75, A.39, B.66, B.5;SH:7.100, 8.69

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JUDICIAL REVIEW – CONVICTION – NATURE OF CONVICTION – CATEGORICAL ANALYSIS

Sandoval v. Yates, 847 F.3d 697 (9th Cir. Jan. 27, 2017) ("When an agency does not reach an issue for which it is owed *Chevron* deference, "the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation." *INS v. Ventura*, 537 U.S. 12, 16 (2002); *see also Gonzales v. Thomas*, 547 U.S. 183, 186 (2006). But interpreting criminal law is not a matter placed primarily in agency hands. *See Hoang*, 641 F.3d at 1161. We owe no deference to the decision of the BIA on this issue and there is no reason to remand for the BIA to decide the issue of divisibility in the first instance. *See Rivera v. Lynch*, 816 F.3d 1064, 1078 n.13 (9th Cir. 2016) ("The question of [a state criminal statute's] divisibility 'requires neither factual development nor agency expertise' and is properly analyzed by this court." (quoting *Chavez-Solis v. Lynch*, 803 F.3d 1004, 1012 n.6 (9th Cir. 2015)).").

CD4:15.37;AF:2.19;CMT3:3.18

RELIEF – WAIVERS – INA § 212(h) WAIVER – NON-LPR CANCELLATION OF REMOVAL – 212(h) WAIVER DOES NOT AVOID STOP-TIME RULE

Guerrero-Roque v. Lynch, 845 F.3d 940, 941-942 (9th Cir. Jan. 9, 2017) (per curiam) (an alien cannot obtain a waiver of inadmissibility under INA § 212(h) to waive convictions that stop the seven-year clock for purposes of cancellation of removal under INA § 240A(b)).

CD4:24.29;AF:2.45;CMT3:3.44

MORAL TUPRITUDE – OBSTRUCTION OF JUSTICE – WITNESS TAMPERING

Escobar v. Lynch, 846 F.3d 1019 (9th Cir. Jan. 20, 2017) (California conviction for violation of Penal Code § 136.1(a), knowingly and maliciously engaging in witness tampering, is not categorically a crime involving moral turpitude, since the California definition of "malice" is categorically overbroad), citing *People v. Wahidi*, 166 Cal.Rptr.3d 416, 418-19 (Ct. App. 2013).

NOTE: This opinion includes an interesting discussion on whether to apply *Chevron* deference to the BIA's definition of "moral turpitude" in this specific context.

CD4:20.6;CMT3:8.6, 9.39;SH:7.121, 8.36

JUDICIAL REVIEW – *CHEVRON* DEFERNECE – MORAL TURPITUDE

Escobar v. Lynch, 846 F.3d 1019 (9th Cir. Jan. 20, 2017) (*Chevron* deference not due to the BIA's definition of "moral turpitude" as applied to California witness tampering).

NOTE: The Court stated as follows:

A separate problem is presented by the BIA's use of a more general description of a CIMT as "contrary to justice, honesty, principle, or good morals," *Matter of Serna*, 20 I. & N. Dec. 579, 582 (BIA 1992), instead of the two-part generic definition employed by this court and the BIA in its published opinions. See, e.g., *Matter of Ruiz-Lopez*, 25 I. & N. Dec. 551, 551 (BIA 2011) ("We have long held that moral turpitude refers generally to conduct that is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general."). The BIA also stated, "the fact that a crime does not involve a threat of harm or actual harm does not prohibit a finding that it involves moral turpitude." The

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California Criminal Defense of Immigrants Newsletter

(CEB 2016)
By Norton Tooby

Continuing Education of the Bar began publishing our *California Criminal Defense of Immigrants E-Newsletter*. This newsletter covers the relevant national immigration law that affects criminal defense of immigrants in California, as well as the California law on the subject. The case summaries and other developments are cross-referenced to the relevant sections of the new CEB practice manual, *California Criminal Defense of Immigrants,* so the newsletter will serve as a cumulative indexed update for the current edition to the present on an ongoing basis. You may subscribe to this newsletter from Continuing Education of the Bar.

The Law Offices of Norton Tooby continues to publish monthly online updates to the 3000-page, three-volume Criminal Defense of Immigrants, along with all of our other practice manuals, through our Premium Web Updates. These updates are keyed to our practice manuals, making it easy for you to check each month to see if a new development has occurred concerning your particular issue, ensuring you are aware of the most recent legal authorities on each topic.

While this office no longer publishes the *California Post-Conviction Relief for Immigrants* newsletter, those interested may obtain the same content, and more, by subscribing to the new CEB newsletter, *California Criminal Defense of Immigrants E-Newsletter*. In addition to the California developments on post-conviction relief for immigrants, this newsletter covers other topics of great importance to immigrants, including safe havens that can be used as replacement convictions when a problematic conviction is vacated, and the actual immigration consequences of the most common California convictions, which are especially useful in establishing ineffective assistance of counsel grounds for relief.

BIA cited to *Matter of Serna* to support this proposition, but *Matter of Serna* involved the fraudulent type of CIMT. See 20 I. & N. Dec. at 585-86.

Finally, the BIA distinguished *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008), which held that falsely identifying oneself to an officer under California Penal Code section 148.9(a) is not a categorical CIMT, because the California statute at issue in Blanco required general as opposed to specific intent. The BIA emphasized that section 136.1(a) requires the prosecution to prove that "the defendant's acts or statements are intended to affect or influence a potential witness'[s] or victim's testimony or acts." *People v. McDaniel*, 27 Cal.Rptr.2d 306, 309 (Ct. App. 1994). But the BIA did not analyze whether this specific intent is sufficiently indicative of a "vicious motive or a corrupt mind" to render section 136.1(a) a categorical CIMT under Ninth Circuit case law or BIA precedent. *Linares-Gonzalez*, 823 F.3d at 514 (quoting *Latter-Singh*, 668 F.3d at 1161). Nor did the BIA address the reasoning in *Blanco*, which emphasized that impeding a criminal investigation is not enough to render a crime a categorical CIMT. See 518 F.3d at 720.

Because we find the BIA decision unpersuasive in its delineation of the generic definition of a CIMT as applied to obstruction of justice, and because we generally do not defer to the BIA in interpreting state or federal criminal statutes, see *Castrijon-Garcia*, 704 F.3d at 1208, we review de novo whether California Penal Code section 136.1(a) is a categorical CIMT.

CD4:15.37, 20.2;CMT3:3.18, 8.2

CAL POST CON – REDUCTION OF FELONY TO MISDEMEANOR – REDUCTION TO MISDEMEANOR PERMITS A PERSON TO OWN A FIREARM, BUT RESENTENCING DOES NOT

People v. Bastidas, 7 Cal. App. 5th 591, 212 Cal. Rptr. 3d 716 (1st Dist. Div. 5, Jan. 13, 2017) (a person whose petition was granted (under Penal Code § 1170.18(b)) cannot own a firearm but the granting of an application (§ 1170.18(g)) permits a person to own a firearm as a result of that specific offense); citing Penal Code § 1170.18(k)("Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such *resentencing* shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6." (Emphasis added.)).

CCDOI 20.64

Upcoming Seminars

Crimes and Immigration - San Francisco
April 29, 2017
CA MCLE: 6.5 Credits
Register Here

Crimes and Immigration - Los Angeles
June 3, 2017
CA MCLE: 6.5 Credits
Register Here

Pre-AILA Crimes and Immigration - New Orleans
June 21, 2017
Registration Information and Details Coming Soon!

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