

FEDERAL COURT

Flores-Vega v Barr, 8/4/9 – 9th CIR. / STRANGULATION / CRIME OF VIOLENCE

The Ninth Circuit held that a conviction under the Oregon statute for “strangulation” was categorically a crime of violence under 18 USC § 16 (a) and therefore an aggravated felony, and denied the petitioner’s application for review of a BIA decision. The petitioner was a native and citizen of Mexico who entered the U.S. in 2002 at age 16 and became an LPR. In 2009, he pleaded guilty to strangulation, that is, he admitted that he knowingly impeded the normal breathing or circulation of the blood of another person by applying pressure on the throat, neck or chest, or blocking the nose or mouth, of the other person. *Cf.* NY Penal Law § 121.11 (person is guilty of criminal obstruction of breathing or blood circulation—a class A misdemeanor—when, with intent to impede normal breathing or circulation of blood of another person, he applies pressure on throat or neck, or blocks nose or mouth, of such person). The appellate court rejected arguments that Oregon courts applied the statute to non-violent conduct and held that strangulation, as defined by statute, involves physical force. The reviewing court also denied the petitioner’s application for withholding of removal. He failed to establish that his life or freedom would be threatened in Mexico on account of race, religion, nationality, membership in a particular social group, or political opinion. There was no evidence that the potential danger had the required nexus to a protected ground. The denial of relief under CAT was also sufficiently supported. The petitioner offered testimony about general conditions of violence, but had not shown that he was likely to be tortured with the acquiescence of a public official.

<https://cases.justia.com/federal/appellate-courts/ca9/14-70690/14-70690-2019-08-02.pdf?ts=1564765414>