

## FEDERAL COURTS

### ***Thompson v Barr*, 5/13/19 – ASSAULT 2<sup>ND</sup> / CRIME OF VIOLENCE**

The petitioner, a native and citizen of Jamaica, sought review of a BIA decision dismissing his appeal of an IJ ruling ordering his removal. The Second Circuit denied the petition. In 2015, the petitioner was convicted in NY of 2<sup>nd</sup> degree assault. Thereafter an IJ ordered his removal based on his conviction of a crime of violence. Under NY Penal Law § 120.05 (1), a person is guilty of 2<sup>nd</sup> degree assault when, with intent to cause serious physical injury to another person, he causes such injury to such person or a third person. The subject crime met the physical force requirement to constitute a crime of violence under 18 U.S.C. § 16 (a); the intent to cause bodily injury necessarily encompassed the use of the requisite force. The defendant argued that the NY statute did not meet the requirement, since it could cover using poison or placing a barrier in front of a car causing an accident. However, the BIA stated that physical force could encompass such acts.

[http://www.ca2.uscourts.gov/decisions/isysquery/9ef006b3-5f71-4eb6-b327-ea45237256ef/1/doc/17-3494\\_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/9ef006b3-5f71-4eb6-b327-ea45237256ef/1/hilite/](http://www.ca2.uscourts.gov/decisions/isysquery/9ef006b3-5f71-4eb6-b327-ea45237256ef/1/doc/17-3494_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/9ef006b3-5f71-4eb6-b327-ea45237256ef/1/hilite/)

### ***Santana-Felix v Barr*, 5/9/19 – CONSPIRACY / MURDER / AGGRAVATED FELONY**

The petitioner, a native and citizen of the Dominican Republic, sought review of a BIA decision affirming an IJ order of removal, based on his NY conviction for conspiracy to commit murder. The Second Circuit denied the petition. Since 2006, the petitioner had been a LPR of the U.S. NY's conspiracy statute is not a categorical match to the federal crime. When the ground of removal involves an inchoate crime, the appellate court considers only whether the object crime is an aggravated felony. In NY, for conspiracy, the prosecution must prove that the defendant had the intent to commit the object offense. Here the government met its burden of proving that the object of the conspiracy was murder. The BIA did not err in looking to the indictment to determine the object crime. Murder 2<sup>nd</sup> under NY law was an aggravated felony.

[http://www.ca2.uscourts.gov/decisions/isysquery/88d68b9d-2ab2-4a46-8fb9-2f763047473d/4/doc/17-3850\\_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/88d68b9d-2ab2-4a46-8fb9-2f763047473d/4/hilite/](http://www.ca2.uscourts.gov/decisions/isysquery/88d68b9d-2ab2-4a46-8fb9-2f763047473d/4/doc/17-3850_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/88d68b9d-2ab2-4a46-8fb9-2f763047473d/4/hilite/)

### ***Arce-Ipanaque v Decker*, 5/15/19 – DUE PROCESS / BOND HEARING**

After serving six months for misdemeanors, the LPR petitioner was detained, pending removal proceedings, for 21 months. He contended that such detention violated his due process rights. The SDNY granted his habeas corpus petition seeking an individualized bail hearing at which the Government would bear the burden of proving dangerousness or risk of flight by clear and convincing evidence and the IJ had to consider ability to pay and the suitability of alternate conditions of relief.

## APPELLATE DIVISION

### Plea Cases – Other Issues

***People v Burks*, 5/16/19 – INTOXICATION DEFENSE / FULLY DISCUSSED**

The defendant appealed from a judgment of Albany County Supreme Court, convicting him of 2<sup>nd</sup> degree murder. The Third Department affirmed. The motion to withdraw the guilty plea was properly denied. In the motion, the defendant asserted that his guilty plea was not knowing and voluntary, due to ineffective assistance of the Public Defender in, among other things, failing to investigate and properly advise him regarding an intoxication defense. Counsel detailed his discussions with the defendant regarding potential defenses. The defendant acknowledged during the plea colloquy that he fully discussed such defense with counsel. In support of his motion, defendant offered only a self-serving statement that he was unable to recall the crime due to his consumption of alcohol and pain medication. However, a videotape depicting his behavior while in police custody after the offense showed that he was in control of his actions.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_03850.htm](http://nycourts.gov/reporter/3dseries/2019/2019_03850.htm)

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