No. _____

In the
Supreme Court of the United States

JOSUE MARTINEZ-HERNANDEZ &
OSCAR CARCAMO-SOTO,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

Petition for Writ of Certiorari

Doug Keller
Federal Defenders of San Diego, Inc.
225 Broadway Street, #900
San Diego, California 92101
619.234.8467
Doug_Keller@fd.org

Counsel for Petitioners

QUESTION PRESENTED

Does a conviction under California Penal Code § 211 categorically qualify as a generic "theft" offense for purposes of 8 U.S.C. § 1101(a)(43)(G)?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

OPINION BELOW

The published decision of the U.S. Court of Appeals for the Ninth Circuit is reproduced on pages 1 through 8 of the appendix.

JURISDICTION

The court of appeals entered judgment on July 25, 2019. Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The appendix contains the following provisions: (1) 8 U.S.C. § 1101, Pet. App. 9a–35a; and (2) California Penal Code § 211, Pet. App. 36a.

STATEMENT OF THE CASE

1. Petitioner Carcamo is a Mexican citizen. In 2009, he pleaded guilty to California Penal Code § 211 for committing a robbery. Following his robbery conviction, he was placed in removal proceedings under 8 U.S.C. § 1228(b). Removal proceedings under 8 U.S.C. § 1228(b) are streamlined and apply to non-citizens who were convicted of an "aggravated felony," a term defined in 8 U.S.C. § 1101(a)(43). Immigration authorities ordered Petitioner Carcamo deported to Mexico, determining that his § 211 conviction qualified as an aggravated felony.

Petitioner Martinez is also a Mexican citizen. In 2004, he pleaded guilty to § 211 as well. As with Petitioner Carcamo, Petitioner Martinez was ordered

removed to Mexico after an immigration officer determined that his § 211 conviction qualified as an aggravated felony.

After the government removed both Petitioners, each attempted to return to the United States unlawfully. They were arrested in separate incidents, however, not far from the border. The government did not charge either with simple illegal entry, a misdemeanor under 8 U.S.C. § 1325. Instead, the government charged each in a separate case with unlawful reentry, a felony under 8 U.S.C. § 1326. For Petitioner Carcamo, the government relied on his 2009 removal order to allege the more aggravated crime. For Petitioner Martinez, the government relied on his 2004 removal order.

Each Petitioner moved to dismiss their re-entry charge under 8 U.S.C. §1326(d). They contended that their § 211 conviction did not qualify as an aggravated felony, and that their predicate removal orders were therefore "fundamentally unfair." *See* 8 U.S.C. § 1326(d)(3). The district courts denied their motions to dismiss, concluding that a § 211 conviction categorically qualified as generic "theft" and thus an "aggravated felony" under 8 U.S.C. § 1101(a)(43)(G).

After the court denied Petitioner Carcamo's motion, he entered into a conditional guilty plea with the government in which he preserved his right to appeal the denial of his motion to dismiss. And after the court denied Petitioner Martinez's motion, he was convicted in a bench trial.

2. Both Petitioners appealed, challenging whether their § 211 convictions qualified as an aggravated felony. Their cases were then consolidated in the court of appeals.

The court of appeals affirmed in a published decision. *See* Pet. App. 1a–8a. The court held that a § 211 conviction categorically qualified as generic theft. Pet. App. 7a–8a. That meant entry of Petitioners' removal orders were not fundamentally unfair. Pet. App. 7a–8a.

REASONS FOR GRANTING THE PETITION

This is the rare case where this Court should grant review for purposes of error correction. At issue in this case is whether a conviction under California Penal Code § 211 categorically qualifies as generic theft and therefore an aggravated felony. As explained below, the court of appeals plainly erred by determining that a § 211 conviction categorically qualifies as generic theft.

1. To determine whether a California robbery conviction qualifies as generic theft, this Court must apply the categorical approach. *See Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016). That approach requires this Court to compare the elements of California robbery with the elements of generic theft. *See id.* If the "elements" of California robbery "are the same as, or narrower than, those of" generic theft, there is a categorical match, and California robbery qualifies as an aggravated felony under 8 U.S.C. § 1101(a)(43)(G). *See Descamps v. United States*, 133 S. Ct. 2276, 2281 (2013). But if the elements of California robbery are broader

than the elements of generic theft, there is no categorical match, "even if the defendant actually committed the offense in its generic form." *See id.* at 2283.

To begin with, § 211 of the California Penal Code defines robbery as:

> [T]he felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

Thus, to convict a defendant of California robbery, the State must prove there was a "taking" of property. California case law broadly defines "taking" in § 211 to mean "'gaining possession of the victim's property *and asporting or carrying away the loot*.'" *See People v. Hill*, 17 Cal. 4th 800, 852 (1998) (emphasis added) (quoting *People v. Cooper*, 53 Cal. 3d 1158, 1165 (Cal. 1991)). In other words, in California, the taking of the property includes conduct *after* the initial acquisition of the property because it includes the asporting of the property. And because the taking includes asporting the property, a robbery in California continues until "the loot . . . being carried away" reaches "a place of temporary safety." *Cooper*, 53 Cal. 3d at 1165.

Importantly, a defendant who merely aids the asportation portion of the robbery will have violated § 211 as a principal under California law. *Id.* at 1161. The California Supreme Court first made this point over two decades ago in *Cooper*. In that case, the court held that a "getaway driver who has no prior knowledge of a robbery, but who forms the intent to aid in carrying away the loot during" its asportation "may properly be found liable as an aider and abettor of the robbery." 53 Cal. 3d at 1161. Thus, because the taking element under California law extends

through the asportation of the property, aiding just the asportation portion of the robbery means the defendant has aided the thief in the taking. The dissent in *Cooper* pointed out that the majority had adopted a "novel rule," since someone not involved in the original acquisition of the stolen property would normally be considered "only an accessory after the fact," not an aider and abettor. *Id.* at 1171–72, 1178 (Kennard, J., dissenting). Nevertheless, the California courts of appeals have since followed the *Cooper* majority's novel extension of robbery liability. *See People v. Jones*, 2007 WL 60575, at *4–5 (Cal. Ct. App. Jan. 10, 2007); *People v. Dryden*, 2005 WL 1231732, at *5–6 (Cal. Ct. App. May 25, 2005).

A concrete example (following *Cooper* and *Dryden*) demonstrates the broad scope of California robbery. Mr. Snatcher forcefully grabs Ms. Victim's purse. Mr. Snatcher flees and runs into his friend, Mr. Getaway. He explains to Mr. Getaway that he is trying to escape, and Mr. Getaway agrees to help by driving him to a safe place. Under California law, Mr. Getaway has violated § 211 even though: (1) he did not help Mr. Snatcher secure dominion over the victim's purse; (2) he did not know about the theft until Mr. Snatcher had secured dominion over the purse; and (3) he himself never possessed the purse or secured dominion over it.

Having established the scope of California robbery, the categorical analysis requires an examination of the scope of the generic offense at issue, generic theft (8 U.S.C. § 1101(a)(43)(G)). Generic theft is defined as the "'taking of property or an exercise of control over property without consent with the criminal intent to deprive the owner of rights and benefits of ownership, even if such deprivation is less than

total or permanent.'" *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 189 (2007) (quoting *Penuliar v. Gonzales*, 435 F.3d 961, 969 (2006)).

The initial element of generic theft describes two alternative ways someone can "secur[e] dominion over" the property—(1) taking or (2) an exercise of control over the property. *See* 2 Wayne R. LaFave, Substantive Criminal Law, § 19.3(a) (3d ed. 2003). While theft statutes at common law described the initial acquisition as only a taking, "[m]odern theft statutes" now often articulate the taking element "in terms of exercising control, as does the Model Penal Code[.]" *Id.* § 19.3(a) n.2 (listing statutes).

An exercise of control over property, like taking property, concerns a "discrete act[] that [is] satisfied instantaneously," *State v. Taylor*, 349 P.3d 696, 703 (Utah 2015), as it occurs the moment the defendant has secured control over the property, *People v. Robinson*, 459 N.E.2d 483, 484 (N.Y. 1983). Therefore, in states that define theft as an exercise of control, the crime is *not* a continuing offense. *See, e.g.*, *Taylor*, 349 P.3d at 703; *State v. Harrison*, 561 N.W.2d 28, 29–30 (Iowa 1997); *State v. Mullin*, 886 P.2d 376, 377–78 (Mont. 1994); *People v. Kimbro*, 538 N.E.2d 826, 827–28 (Ill. Ct. App. 1989); *State v. Gainer*, 608 P.2d 968, 969–73 (Kan. 1980). In other words, an exercise of control over property is not the same as asporting property. Indeed, "[the] common law asportation requirement is generally of no significance today, as theft offenses in the modern codes are usually defined without resort to that concept." 2 Wayne R. LaFave, Substantive Criminal Law, § 19.3(b) (3d ed. 2003) (listing cases). Simply put, generic theft does not have an asportation

component. A generic theft is over as soon as the thief takes the property or exercises control over the property.

In comparing the California robbery statute with generic theft, the California robbery statute "criminalize[s] a broader swath of conduct than the conduct covered" by generic theft, meaning there is no categorical match. *See United States v. Dominguez-Maroyoqui*, 748 F.3d 918, 920 (9th Cir. 2014) (internal quotation marks omitted).

- Someone like Mr. Getaway will have committed California robbery, but not *generic theft*. Why? Because Mr. Getaway will not have secured dominion over the stolen property—he did not "take" the property, nor did he undertake "an exercise of control" over the property. *See Duenas-Alvarez*, 549 U.S. at 189.

- Nor will someone like Mr. Getaway have *aided and abetted a generic theft*. Why? Because by the time Mr. Getaway became involved, Mr. Snatcher already secured dominion over the property. Since the taking was already complete, Mr. Getaway could not have aided and abetted Mr. Snatcher's taking either.

Thus, conduct criminalized under the California robbery statute would not qualify as generic theft or generic aiding and abetting of a theft. At best, Mr. Getaway was a generic accessory after the fact to a generic theft. But a defendant who is an accessory after the fact to a generic offense will have *not* committed the generic offense. *United States v. Vidal*, 504 F.3d 1072, 1077–79 (9th Cir. 2007) (en banc) (citing *Duenas-Alvarez*, 549 U.S. at 189). Accordingly, there is not a match between California robbery and generic theft.

2. In disagreeing, the court of appeals mischaracterized Petitioners' argument as hinging on the idea that someone like Mr. Getaway would be an

accessory after the fact *under California law*. Pet. App. 7a. The panel is correct that someone like Mr. Getaway would *not* be an accessory after the fact under California law. But Petitioners never argued otherwise. Rather, they contended that, under California law, someone like Mr. Getaway would be a principal to a California robbery, *see Cooper*, 53 Cal. 3d at 1161, even though under the generic definition he would be an accessory after the fact to a generic theft. In other words, Mr. Getaway would be an accessory after the fact under generic principles, not under California law. And that's exactly why his conduct—indisputably criminalized under California law—would not qualify as generic theft. *See Vidal*, 504 F.3d at 1077–79.

The court of appeals also asserted that, because someone must "form the intent to facilitate or encourage the commission of the robbery before or during the carrying away of the loot," someone like Mr. Getaway must have engaged in the "exercise of control over property without consent of the owner[.]" Pet. App. 7a–8a (internal citation and quotation marks omitted). That just isn't so. Helping someone escape with stolen goods does not mean you *yourself* have exercised control over those goods. You can help someone escape with stolen goods without exercising control over those goods. For example, if Mr. Getaway helps Mr. Snatcher by just driving him away, Mr. Getaway will not need to take possession of the property that Mr. Snatcher has stolen.

Accordingly, there is no categorical match between § 211 and generic theft. The court of appeals clearly erred by holding to the contrary.

* * *

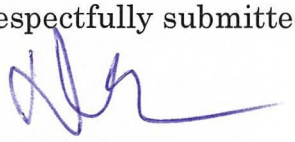
In short, the court of appeals erred when it determined that Petitioners were properly removed as aggravated felons. This Court should correct the court of appeal's error and remand to that court for further proceedings.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

August 30, 2019

Respectfully submitted,



Doug Keller

APPENDIX

2019 WL 3332591
United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Josue MARTINEZ-HERNANDEZ,
Defendant-Appellant.
United States of America, Plaintiff-Appellee,
v.
Oscar Carcamo-Soto, Defendant-Appellant.

No. 16-50423, No. 17-50295
|
Argued and Submitted November 8, 2018 Pasadena, California
|
Filed January 9, 2019
|
Amended July 25, 2019

Synopsis

Background: Defendants were separately convicted in the United States District Court for the Southern District of California, John A. Houston, J., No. 3:15-cr-02876-JAH-1, and Marilyn L. Huff, J., No. 3:16-cr-02253-H-1, of illegal reentry after removal subsequent to aggravated felony conviction. Defendants appealed.

Holdings: On denial of rehearing en banc, the Court of Appeals, Hurwitz, Circuit Judge, held that:

[1] fact that defendants' removal notices cited provision of the Immigration and Nationality Act (INA) governing crimes of violence rather than provision governing theft offenses, did not render notices invalid; and

[2] convictions for California robbery met definition for generic theft offense, and thus qualified as removable "aggravated felonies."

Affirmed.

Opinion, 912 F.3d 1207, amended.

West Headnotes (16)

[1] **Criminal Law**
Review De Novo

The Court of Appeals reviews de novo the denial of a motion to dismiss an indictment charging illegal reentry after removal due to invalidity of the prior removal order. Immigration and Nationality Act, § 276, 8 U.S.C.A. § 1326(d).

Cases that cite this headnote

[2] **Aliens, Immigration, and Citizenship**
Collateral Attack

Aliens, Immigration, and Citizenship
Reentry after removal

A defendant charged with illegal reentry after removal may bring a collateral attack challenging the validity of his underlying removal order, because that order serves as a predicate element of his conviction. Immigration and Nationality Act, § 276, 8 U.S.C.A. § 1326(d).

Cases that cite this headnote

[3] **Aliens, Immigration, and Citizenship**
Collateral Attack

A successful collateral attack on an underlying removal order by a defendant charged with illegal reentry after removal requires proof of a deficiency in the original removal process. Immigration and Nationality Act, § 276, 8 U.S.C.A. § 1326(d).

Cases that cite this headnote

[4] **Aliens, Immigration, and Citizenship**
Collateral Attack

An underlying removal order is "fundamentally unfair," as required to support a collateral attack on that removal order by defendant charged with illegal reentry after removal, if: (1) the defendant's due process rights were violated by defects in his underlying removal proceeding, and (2) he suffered prejudice as a result of the

defects. U.S. Const. Amend. 5; Immigration and Nationality Act, § 276, 8 U.S.C.A. § 1326(d).

Cases that cite this headnote

[5] **Aliens, Immigration, and Citizenship**
Crimes of violence

Prior California robbery conviction did not qualify as crime of violence, and thus was not removable aggravated felony, as necessary to support conviction for illegal reentry after removal for aggravated felony conviction; it was possible to violate California robbery statute by accidental use of force. Immigration and Nationality Act, §§ 101, 237, 276, 8 U.S.C.A. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii), 1326; 18 U.S.C.A. § 16(a); Cal. Penal Code § 211.

Cases that cite this headnote

[6] **Aliens, Immigration, and Citizenship**
Collateral Attack

To support a collateral attack of an underlying removal order, a defendant charged with illegal reentry after removal must demonstrate that prejudice resulted from a defect in the administrative removal process. Immigration and Nationality Act, § 276, 8 U.S.C.A. § 1326(d).

Cases that cite this headnote

[7] **Aliens, Immigration, and Citizenship**
Standard and Scope of Review

When considering a petition for review of a removal decision of the Board of Immigration Appeals (BIA), the Court of Appeals has no power to affirm the BIA on a ground for removal never charged by the government or found by the immigration judge (IJ).

Cases that cite this headnote

[8] **Aliens, Immigration, and Citizenship**
Substantial evidence in general

Aliens, Immigration, and Citizenship
Law questions

In addressing petitions for review of final removal orders by the Board of Immigration Appeals (BIA), the inquiry of the Court of Appeals is limited to determining whether the agency decision is supported by substantial evidence or the BIA made an error of law.

Cases that cite this headnote

[9] **Aliens, Immigration, and Citizenship**
Determination

If the Board of Immigration Appeals (BIA) errs in a removal proceeding, the Court of Appeals lacks the power to tell it to reach the same removal decision for a different reason, as the Court would be substituting its own judgment for that of the executive with respect to the discretionary decision to afford relief from removal.

Cases that cite this headnote

[10] **Aliens, Immigration, and Citizenship**
Collateral Attack

In the context of a collateral attack on an underlying removal order by a defendant charged with illegal reentry after removal, the central issue for decision is whether a defendant was removed when he should not have been. Immigration and Nationality Act, § 276, 8 U.S.C.A. § 1326(d).

Cases that cite this headnote

[11] **Aliens, Immigration, and Citizenship**
Notice; order to show cause

Aliens, Immigration, and Citizenship
Reentry after removal

Fact that defendants' removal notices cited provision of the INA governing crimes of violence rather than provision governing theft offenses, did not render notices invalid, for purposes of defendants' subsequent illegal reentry charges; government offered no alternative justification for removal, but merely argued that even if the original statutory citation making defendants' California robbery convictions a basis for removal had been made

retroactively inapplicable, the same convictions, which defendants admitted, required removal under a different section of the same statute previously invoked, and only issue was whether those convictions justified defendants' removals. Immigration and Nationality Act §§ 101, 276, 8 U.S.C.A. §§ 1101(a)(43)(F), (G), 1326; Cal. Penal Code § 211.

Cases that cite this headnote

[12] **Aliens, Immigration, and Citizenship**
Hearing

The determination of whether a defendant's prior conviction qualifies as an aggravated felony theft offense under the INA is purely a question of law. Immigration and Nationality Act, § 101, 8 U.S.C.A. § 1101(a)(43)(G).

Cases that cite this headnote

[13] **Aliens, Immigration, and Citizenship**
Fraud, forgery, and theft offenses

To determine whether a conviction qualifies as a "theft offense" under the INA, and thus is an aggravated felony supporting removal subsequent to an aggravated felony, the court applies the categorical approach, under which it compares the elements of the statute forming the basis of the conviction with the elements of the generic crime of theft. Immigration and Nationality Act, §§ 101, 237, 8 U.S.C.A. §§ 1101(a)(43)(G), 1227(a)(2)(A)(iii).

Cases that cite this headnote

[14] **Aliens, Immigration, and Citizenship**
Fraud, forgery, and theft offenses

"Generic theft," for the purpose of determining, utilizing the categorical approach, whether a prior conviction qualifies as a theft offense under the INA, and thus is an aggravated felony supporting removal subsequent to an aggravated felony, requires (1) the taking of (2) property (3) without consent (4) with the intent to deprive the owner of rights and benefits of ownership. Immigration and Nationality Act, §§ 101, 237, 8 U.S.C.A. §§ 1101(a)(43)(G), 1227(a)(2)(A)(iii).

Cases that cite this headnote

[15] **Aliens, Immigration, and Citizenship**
Fraud, forgery, and theft offenses

Defendants' prior convictions for California robbery met definition for generic theft offense, and thus qualified as "aggravated felonies" for which they were removable, so that defendants could not successfully collaterally attack their underlying removal orders in their instant prosecutions for illegal reentry after removal for aggravated felony conviction; California robbery statute required specific intent to steal, and the exercise of control over property against owner's will, by means of force or fear, with intent to deprive owner of rights of ownership, which generic theft offense also required. Immigration and Nationality Act, §§ 101, 237, 276, 8 U.S.C.A. §§ 1101(a)(43)(G), 1227(a)(2)(A)(iii), 1326(d); Cal. Penal Code § 211.

Cases that cite this headnote

[16] **Robbery**
Intent

Robbery
Taking in general

Under California law, to be convicted of robbery under any theory, a defendant must form the intent to facilitate or encourage the commission of the robbery before or during the carrying away of the loot; and, anyone found guilty of robbery must have engaged in the exercise of control over property without consent with the criminal intent to deprive the owner of the rights and benefits of ownership. Cal. Penal Code § 211.

Cases that cite this headnote

West Codenotes

Recognized as Unconstitutional
18 U.S.C.A. § 16(b)

Attorneys and Law Firms

Doug Keller (argued), Federal Defenders of San Diego, Inc., San Diego, California, for Defendants-Appellants.

Daniel Earl Zipp (argued), Assistant United States Attorney; Helen H. Hong, Assistant United States Attorney, Chief, Appellate Section, Criminal Division; Robert S. Brewer Jr., United States Attorney; United States Attorney's Office, San Diego, California; for Plaintiff-Appellee.

Richard Frankel, Attorney; John Lang, Student Counsel; Federation Litigation and Appeals Clinic, Drexel University Kline School of Law, Philadelphia, Pennsylvania; for Amici Curiae Immigration Law Professors and Immigration Law Clinics.

Kari Hong, Ninth Circuit Appellate Program, Boston College Law School, Newton, Massachusetts, for Amici Curiae American Immigration Lawyers Association and Florence Immigrant and Refugee Rights Project.

Hilary Potashner, Federal Public Defender, Office of the Federal Public Defender, Los Angeles, California, for Amici Curiae Ninth Circuit Federal and Community Defenders.

Appeal from the United States District Court for the Southern District of California, John A. Houston, District Judge, Presiding, D.C. No. 3:15-cr-02876-JAH-1

Appeal from the United States District Court for the Southern District of California, Marilyn L. Huff, District Judge, Presiding, D.C. No. 3:16-cr-02253-H-1

Before: Johnnie B. Rawlinson, Michael J. Melloy,* and Andrew D. Hurwitz, Circuit Judges.

ORDER

The opinion filed on January 9, 2019, and published at 912 F.3d 1207, is amended by the opinion filed concurrently with this order.

With these amendments, the panel has voted to deny the petitions for panel rehearing. Judges Rawlinson and Hurwitz have also voted to deny the petitions for rehearing en banc, and Judge Melloy so recommends.

The full court has been advised of the petitions for rehearing en banc and no judge has requested a vote on whether to rehear the matters en banc. Fed. R. App. P. 35.

The petitions for panel rehearing and rehearing en banc, Dkt. 46 (17-50295) and 49 (16-50423), are **DENIED**.

No additional petitions for rehearing will be entertained.

OPINION

HURWITZ, Circuit Judge:

Josue Martinez-Hernandez and Oscar Carcamo-Soto (the "Defendants") are Mexican citizens; each entered the United States without inspection while young. Years later, each Defendant was convicted of robbery in violation of California Penal Code ("CPC") § 211. Upon completion of their prison terms, both Defendants were deported to Mexico after immigration officers determined that their robbery convictions were for "crimes of violence"—and thus constituted aggravated felonies under 8 U.S.C. § 1101(a)(43)(F).

After returning to the United States, both defendants were convicted of illegal reentry in violation of 8 U.S.C. § 1326. In these consolidated appeals, they collaterally attack their removal orders, arguing that a conviction under CPC § 211 no longer qualifies under § 1101(a)(43)(F) as a crime of violence. We agree with that argument. But that agreement avails the Defendants little, because the district courts in both cases correctly held that § 211 robbery qualifies as a generic theft offense under 8 U.S.C. § 1101(a)(43)(G), and thus is an aggravated felony under 18 U.S.C. § 1227(a)(2)(A)(iii). We therefore affirm the Defendants' convictions.

I.

*2 Martinez pleaded guilty to robbery in violation of CPC § 211 in 2004 and was sentenced to five years imprisonment. Carcamo pleaded guilty to CPC § 211 robbery in 2009 and received a three-year sentence. After release from prison, each Defendant was served with a Notice of Intent to Issue a Final Administrative Removal Order ("Notice") and placed in expedited removal proceedings pursuant to 8 U.S.C. § 1228. The materially identical Notices alleged that

each Defendant had (1) entered the United States "without inspection, admission, or parole by an immigration officer," and (2) been later convicted of robbery in violation of CPC § 211. The Notices stated that the named Defendant was deportable under 8 U.S.C. § 1227(a)(2)(A)(iii) "because you have been convicted of an aggravated felony as defined in ... 8 U.S.C. § 1101(a)(43)(F)." After hearings before immigration officers, both Defendants were ordered to be deported to Mexico.

[1] Both Defendants later reentered the country, and were individually charged with violating 8 U.S.C. § 1326. They each filed motions to dismiss pursuant to 8 U.S.C. § 1326(d), claiming that their removal orders were invalid because CPC § 211 robbery was no longer treated as a crime of violence under recent Ninth Circuit decisions. The district courts denied the motions, reasoning that even if CPC § 211 robbery were not a "crime of violence" aggravated felony under § 1101(a)(43)(F), it still was a "theft offense" aggravated felony under § 1101(a)(43)(G). Carcamo entered into a conditional plea agreement allowing him to appeal the denial of his § 1326(d) motion. Martinez initially entered a guilty plea, but later withdrew it, and appealed the denial of his § 1326(d) motion. We have jurisdiction over the Defendants' consolidated appeals under 28 U.S.C. § 1291, and review the denial of a motion to dismiss under 8 U.S.C. § 1326(d) de novo. *United States v. Cisneros-Rodriguez*, 813 F.3d 748, 755 (9th Cir. 2015).

II.

[2] [3] [4] A defendant charged with illegal reentry in violation of 8 U.S.C. § 1326 may "bring a collateral attack challenging the validity of his underlying removal order, because that order serves as a predicate element of his conviction." *United States v. Ochoa*, 861 F.3d 1010, 1014 (9th Cir. 2017). A successful collateral attack requires proof not only of a deficiency in the original removal process, but also that "the entry of the order was fundamentally unfair." 8 U.S.C. § 1326(d)(2)–(3). "An underlying removal order is 'fundamentally unfair' if: (1) a defendant's due process rights were violated by defects in his underlying deportation proceeding, and (2) he suffered prejudice as a result of the defects." *United States v. Ubaldo-Figueroa*, 364 F.3d 1042, 1048 (9th Cir. 2004) (internal alteration omitted).

A.

The Defendants were removed under 8 U.S.C. § 1227(a)(2)(A)(iii), which applies to an "alien who is convicted of an aggravated felony at any time after admission." Under § 1101(a)(43)(F) an "aggravated felony" is a "crime of violence" as defined in 18 U.S.C. § 16, for which the term of imprisonment is at least one year. A crime of violence under 18 U.S.C. § 16 includes, as relevant in this case, "an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 16(a). [1]

When the Defendants were removed, we treated a robbery conviction under CPC § 211 as a crime of violence under § 1101(a)(43)(F). *See Nieves-Medrano v. Holder*, 590 F.3d 1057, 1057–58 (9th Cir. 2010). But, in 2011, the California Supreme Court clarified that CPC § 211 can be violated by the accidental use of force. *See People v. Anderson*, 51 Cal.4th 989, 125 Cal.Rptr.3d 408, 252 P.3d 968, 972 (2011). We therefore subsequently held that a CPC § 211 conviction is not categorically a violent felony as defined in the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(1). *United States v. Dixon*, 805 F.3d 1193, 1197–98 (9th Cir. 2015).

*3 [5] The ACCA defines a "violent felony" as one that "has as an element the use, attempted use, or threatened use of physical force against the person of another." 18 U.S.C. § 924(e)(2)(B)(i). The definition of a crime of violence in 18 U.S.C. § 16(a) is materially indistinguishable, and the government has therefore wisely conceded that the defendants' robbery convictions do not today qualify as "crimes of violence" under 8 U.S.C. § 1101(a)(43)(F). The government has also correctly conceded that the current state of Circuit law governs the Defendants' collateral attacks of their removal orders. *See United States v. Aguilera-Rios*, 769 F.3d 626, 633 (9th Cir. 2014) (noting in this context that "statutory interpretation opinions are fully retroactive.").

B.

[6] But, the government's concessions, while helpful, merely start our inquiry. A successful collateral attack requires proof that "entry of the order was fundamentally unfair." 8 U.S.C. § 1326(d)(3). Thus, the Defendants must therefore "demonstrate that prejudice resulted" from a defect in the

administrative process. *United States v. Garcia-Martinez*, 228 F.3d 956, 963 (9th Cir. 2000).

1.

The Notices characterized the Defendants' CPC § 211 convictions as aggravated felonies because they constituted "crimes of violence" as defined in 8 U.S.C. 1101(a)(43)(F). The district courts in these cases instead found the § 211 convictions to be aggravated felonies because they were theft offenses, as defined in 8 U.S.C. § 1101(a)(43)(G). The Defendants first argue that we may not consider whether their CPC § 211 convictions qualify as aggravated felonies for a reason other than the one specified in their Notices.

[7] [8] [9] The Defendants rely on the settled premise that, when considering a petition for review of a decision of the Bureau of Immigration Appeals, we "have no power to affirm the BIA on a ground never charged by the [government] or found by the IJ." *Al Mutarreb v. Holder*, 561 F.3d 1023, 1029 (9th Cir. 2009). But, this case arrives in a quite different procedural posture than our direct review of BIA decisions. In addressing petitions for review, our inquiry is limited to determining whether the agency decision is supported by substantial evidence or the BIA made an error of law. *See Morgan v. Mukasey*, 529 F.3d 1202, 1206 (9th Cir. 2008). If the agency erred, we lack the power to tell it to reach the same result for a different reason, as we would be substituting our judgment for that of the executive with respect to the discretionary decision to afford relief from removal. *See Gomez-Lopez v. Ashcroft*, 393 F.3d 882, 884 (9th Cir. 2005) (noting that judicial review is precluded "with respect to decisions that constitute an exercise of the Attorney General's discretion."); *Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 908 F.3d 476, 494 (9th Cir. 2018) ("[T]he APA also forecloses judicial review under its procedures to the extent that agency action is committed to agency discretion by law.") (internal quotation omitted).

[10] Here, however, we do not directly review executive agency action. Rather, we consider appeals from district court orders rejecting collateral attacks on prior executive orders. In this context, the central issue for decision is whether a defendant "was removed when he should not have been." *Aguilera-Rios*, 769 F.3d at 630 (quoting *United States v. Camacho-Lopez*, 450 F.3d 928, 930 (9th Cir. 2006)). If a violation of CPC § 211 is categorically a theft offense under 8 U.S.C. § 1101(a)(43)(G), the very convictions cited in the Notices would plainly have provided a statutory basis for their removals.

[11] Defendants argue that because the Notices cited 8 U.S.C. § 1101(a)(43)(F)—the provision governing crimes of violence—rather than § 1101(a)(43)(G), which governs theft offenses, they are invalid. The argument relies on our decision in *United States v. Ochoa-Oregel*, 904 F.3d 682 (9th Cir. 2018), for the proposition that once error in the original removal is established, the government cannot later argue that the Defendants could have been removed on other grounds. But that case, although containing language which when taken in isolation supports the Defendants' arguments, is fundamentally different than these cases. In *Ochoa-Oregel*, a legal permanent resident was first ordered removed in 2008 in absentia, but this Court found he was denied due process because he "did not receive notice of either his in absentia removal hearing or of his ability to file a motion to reopen such proceedings." *Id.* at 684. Ochoa was again ordered removed in 2011 for presenting false entry documents, but this Court concluded that the "due process defects in the erroneous 2008 removal proceeding infect the 2011 removal," by stripping Ochoa "of the important legal entitlements that come with lawful permanent resident status through a legally erroneous decision that he ... had no meaningful opportunity to contest." *Id.* at 685.

*4 The government argued that Ochoa was not prejudiced by the defects in the prior removal orders because "he was an aggravated felon, who could have been removed anyway, and who would have been denied discretionary relief, including withdrawal of his application for admission." *Id.* But, no prior notice alleged removability on that basis, and the panel rejected that argument, noting that "even if the government might have been able to remove him on other grounds through a formal removal proceeding, his removal on illegitimate grounds is enough to show prejudice." *Id.* at 685–86.

Here, however, the defendants were not denied procedural due process or removed on "illegitimate grounds." The grounds for the removals were their § 211 convictions. The government offers no alternative justification for removal today, but merely argues that even if the original statutory citation making the convictions a basis for removal had been made retroactively inapplicable, the same convictions require removal under a different section of the same statute previously invoked. Unlike Ochoa, who was deprived of the important protections of legal permanent resident status through removal proceedings that violated due process, the

Defendants long ago admitted their § 211 convictions. The only issue before us today is whether those convictions justified the Defendants' removals.[2]

2.

[12] We therefore turn to whether a § 211 conviction qualifies as a "theft offense" under § 1101(a)(43)(G), which is purely a question of law. *See Menendez v. Whitaker*, 908 F.3d 467, 471 (9th Cir. 2018). Even if the Defendants did not have occasion to address that legal question at the time of their removals, they have thoroughly done so today. If CPC § 211 robbery is an aggravated felony under § 1101(a)(43)(G), the Defendants will have suffered no real prejudice from any inability to address the issue in their original removal proceedings.

[13] [14] To determine whether a CPC § 211 conviction qualifies as a "theft offense" under § 1101(a)(43)(G) and thus is an aggravated felony under 8 U.S.C.§ 1227(a)(2)(A)(iii), we apply the "categorical" approach, under which we "compare the elements of the statute forming the basis of the defendant's conviction with the elements of the generic crime." *United States v. Alvarado-Pineda*, 774 F.3d 1198, 1202 (9th Cir. 2014) (internal quotation omitted). "We have defined generic 'theft' as a taking of property or an exercise of control over property without consent with the criminal intent to deprive the owner of the rights and benefits of ownership." *Id.* (internal quotations and citations omitted). "Generic theft, in other words, requires (1) the taking of (2) property (3) without consent (4) with the intent to deprive the owner of rights and benefits of ownership." *Id.* (internal quotations and citations omitted).

[15] CPC § 211 in turn defines robbery as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." We have not addressed in a published opinion whether CPC § 211 robbery is categorically a generic theft offense under 8 U.S.C. § 1101(a)(43)(G).[3] But, in *Alvarado-Pineda*, we held that a virtually identical Washington statute, which prohibited the "tak[ing of] personal property from the person of another or in his or her presence against his or her will," was a categorical theft offense. 774 F.3d at 1202–03 (alteration in original) (citing Wash. Rev. Code § 9A.56.190). We stressed that although "the statute does not explicitly provide that specific intent to steal is an element of the crime, the state courts have so held." *Id.* at 1202. And, we noted the accepted rule that robbery is "larceny ... plus two additional requirements: that the property be taken from the victim's presence, and that the taking be accomplished by means of force or fear." *Id.* at 1203 (citing 3 Wayne R. LaFave, *Substantive Criminal Law* § 20.3 (2d ed. 2003)) (internal quotations omitted).

*5 The elements of CPC § 211 robbery are indistinguishable from those in the Washington robbery statute addressed in *Alvarado-Pineda*. The California Supreme Court, like its Washington counterpart, has made clear that specific intent to steal is an essential element of § 211 robbery. *See Anderson*, 125 Cal.Rptr.3d 408, 252 P.3d at 972; *People v. Pollock*, 32 Cal.4th 1153, 13 Cal.Rptr.3d 34, 89 P.3d 353, 367 (2004); *People v. Lewis*, 25 Cal.4th 610, 106 Cal.Rptr.2d 629, 22 P.3d 392, 419 (2001). And, consistent with the general rule, the California Supreme Court has also described CPC § 211 as punishing "a species of aggravated larceny," elevated to robbery by proof that the taking was accomplished through force or fear and from the victim or in his presence. *People v. Gomez*, 43 Cal.4th 249, 74 Cal.Rptr.3d 123, 179 P.3d 917, 920 (2008).

In an attempt to distinguish *Alvarado-Pineda*, the Defendants argue that one can be convicted of CPC § 211 robbery as an accessory after the fact, for example, by being a getaway driver. The Defendants then contend, quoting *United States v. Vidal*, that "an accessory after the fact to theft cannot be culpable of generic theft." 504 F.3d 1072, 1080 (9th Cir. 2007) (en banc). On analysis, however, the argument fails.

As we have previously noted, *Vidal* addressed an auto theft statute, California Vehicle Code § 10851(a), which expressly imposed liability on accessories after the fact. *See Verdugo-Gonzalez v. Holder*, 581 F.3d 1059, 1061–62 (9th Cir. 2009) (*Vidal* "examined ... a statute that expressly included within its reach the actions of an accessory."). CPC § 211 has no such language. Moreover, "[t]here is a separate section in the California Penal Code, section 32, that specifically imposes criminal liabilities on accessories." *Id.* at 1062. And, "[e]xcept in those relatively rare instances where the conduct of an accessory after the fact is included within the criminal statute, as was the case in *Vidal*, California courts require prosecutions under an accessory after the fact theory of liability to be brought under section 32 of the California Penal Code." *Id.* Neither defendant here was charged under § 32.

[16] Defendants also argue that because California courts have upheld convictions under § 211 of defendants who

engaged only in asportation (taking) of property that had previously been forcibly taken from its owner, § 211 robbery is not generic theft. But, to be convicted of CPC § 211 robbery under any theory, a defendant "must form the intent to facilitate or encourage the commission of the robbery before or during the carrying away of the loot." *Gomez*, 74 Cal.Rptr.3d 123, 179 P.3d at 921 (citing *People v. Cooper*, 53 Cal.3d 1158, 282 Cal.Rptr. 450, 811 P.2d 742, 748 (1991)). And, anyone found guilty of CPC § 211 robbery must have engaged in the "exercise of control over property without consent with the criminal intent to deprive the owner of the rights and benefits of ownership." *See Alvarado-Pineda*, 774 F.3d at 1202. That is the classic definition of theft. *Id.*

III.

For the reasons above, we **AFFIRM** the judgments of the district courts in these consolidated appeals.

All Citations

--- F.3d ----, 2019 WL 3332591, 19 Cal. Daily Op. Serv. 7254, 2019 Daily Journal D.A.R. 6974

Footnotes

* The Honorable Michael J. Melloy, United States Circuit Judge for the U.S. Court of Appeals for the Eighth Circuit, sitting by designation.

1 The so-called "residual clause" in 18 U.S.C. § 16(b) also defines a "crime of violence" as "any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." Section 16(b) was held unconstitutionally vague in *Sessions v. Dimaya*, —— U.S. ——, 138 S. Ct. 1204, 200 L.Ed.2d 549 (2018), and is not at issue in this case.

2 *United States v. Valdivia-Flores*, 876 F.3d 1201 (9th Cir. 2017), upon which the Defendants also rely, is inapposite. Valdivia was removed because of a Washington conviction for possession of heroin, and this Court held that the state crime was not categorically an aggravated felony. *Id.* at 1208–09. The government did not suggest that the conviction provided a ground for removal under another statutory provision.

3 A recent memorandum disposition held that CPC § 211 robbery is categorically a § 1101(a)(43)(G) theft offense. *Pena-Rojas v. Sessions*, 724 F. App'x 622, 623 (9th Cir. 2018); *see also United States v. Guzman-Ibarez*, 792 F.3d 1094, 1097–99 (9th Cir. 2015) (holding, but without applying a categorical analysis, that an immigration judge correctly determined in 1999 that a conviction under CPC § 211 was a theft offense).

End of Document

United States Code Annotated
Title 8. Aliens and Nationality (Refs & Annos)
Chapter 12. Immigration and Nationality (Refs & Annos)
Subchapter I. General Provisions (Refs & Annos)

8 U.S.C.A. § 1101

§ 1101. Definitions

Effective: January 17, 2014
Currentness

(a) As used in this chapter--

(1) The term "administrator" means the official designated by the Secretary of State pursuant to section 1104(b) of this title.

(2) The term "advocates" includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.

(3) The term "alien" means any person not a citizen or national of the United States.

(4) The term "application for admission" has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.

(5) The term "Attorney General" means the Attorney General of the United States.

(6) The term "border crossing identification card" means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations. Such regulations shall provide that (A) each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and (B) an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(7) The term "clerk of court" means a clerk of a naturalization court.

(8) The terms "Commissioner" and "Deputy Commissioner" mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(9) The term "consular officer" means any consular, diplomatic, or other officer or employee of the United States designated under regulations prescribed under authority contained in this chapter, for the purpose of issuing immigrant or nonimmigrant visas or, when used in subchapter III, for the purpose of adjudicating nationality.

(10) The term "crewman" means a person serving in any capacity on board a vessel or aircraft.

(11) The term "diplomatic visa" means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe.

(12) The term "doctrine" includes, but is not limited to, policies, practices, purposes, aims, or procedures.

(13)(A) The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

(B) An alien who is paroled under section 1182(d)(5) of this title or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien--

(i) has abandoned or relinquished that status,

(ii) has been absent from the United States for a continuous period in excess of 180 days,

(iii) has engaged in illegal activity after having departed the United States,

(iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,

(v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or

(vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

(14) The term "foreign state" includes outlying possessions of a foreign state, but self-governing dominions or territories under mandate or trusteeship shall be regarded as separate foreign states.

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens--

(A)(i) an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government, recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien's immediate family;

(ii) upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and

(iii) upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;

(B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;

(C) an alien in immediate and continuous transit through the United States, or an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Headquarters Agreement with the United Nations (61 Stat. 758);

(D)(i) an alien crewman serving in good faith as such in a capacity required for normal operation and service on board a vessel, as defined in section 1288(a) of this title (other than a fishing vessel having its home port or an operating base in the United States), or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

(ii) an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fishing vessel having its home port or an operating base in the United States who intends to land temporarily in Guam or the Commonwealth of the Northern Mariana Islands and solely in pursuit of his calling as a crewman and to depart from Guam or the Commonwealth of the Northern Mariana Islands with the vessel on which he arrived;

(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him; (i) solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which he is a national; (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital; or (iii) solely to perform services in a specialty occupation in the United States if the alien is a national of the Commonwealth of Australia and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 1182(t)(1) of this title;

(F) (i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 1184(l) of this title at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(G)(i) a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669), accredited resident members of the staff of such representatives, and members of his or their immediate family;

(ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;

(iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which he is an accredited representative is not a member of such international organization; and the members of his immediate family;

(iv) officers, or employees of such international organizations, and the members of their immediate families;

(v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees;

(H) an alien (i) (a) [Repealed. Pub.L. 106-95, § 2(c), Nov. 12, 1999, 113 Stat. 1316] (b) subject to section 1182(j)(2) of this title, who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 1184(i)(1) of this title or as a fashion model, who meets the requirements for the occupation specified in section 1184(i)(2) of this title or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 1182(n)(1) of this title, or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 1184(g)(8)(A) of this title, who is engaged in a specialty occupation described in section 1184(i)(3) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 1182(t)(1) of this title, or (c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 1182(m)(1) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 1182(m)(2) of this title for the

facility (as defined in section 1182(m)(6) of this title) for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of Title 26, agriculture as defined in section 203(f) of Title 29, and the pressing of apples for cider on a farm, of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

(I) upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him;

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 1182(j) of this title, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(K) subject to subsections (d) and (p) of section 1184 of this title, an alien who--

(i) is the fiancee or fiance of a citizen of the United States (other than a citizen described in section 1154(a)(1)(A)(viii)(I) of this title) and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission;

(ii) has concluded a valid marriage with a citizen of the United States (other than a citizen described in section 1154(a)(1)(A)(viii)(I) of this title) who is the petitioner, is the beneficiary of a petition to accord a status under section 1151(b)(2)(A)(i) of this title that was filed under section 1154 of this title by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

(iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(L) subject to section 1184(c)(2) of this title, an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(M) (i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i) (or under analogous authority under paragraph (27)(L)), but only if and while the alien is a child, or

(ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I) (or under analogous authority under paragraph (27)(L));

(O) an alien who--

(i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability; or

(ii)(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

(II) is an integral part of such actual performance,

(III) (a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing longstanding working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

(IV) has a foreign residence which the alien has no intention of abandoning; or

(iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(P) an alien having a foreign residence which the alien has no intention of abandoning who--

(i) (a) is described in section 1184(c)(4)(A) of this title (relating to athletes), or (b) is described in section 1184(c)(4)(B) of this title (relating to entertainment groups);

(ii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers;

(iii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely to perform, teach, or coach as such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique; or

(iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien;

(Q) an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program approved by the Secretary of Homeland Security for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers;

(R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who--

(i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

(ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii);

(S) subject to section 1184(k) of this title, an alien--

(i) who the Attorney General determines--

(I) is in possession of critical reliable information concerning a criminal organization or enterprise;

(II) is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and

(III) whose presence in the United States the Attorney General determines is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise; or

(ii) who the Secretary of State and the Attorney General jointly determine--

(I) is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation;

(II) is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;

(III) will be or has been placed in danger as a result of providing such information; and

(IV) is eligible to receive a reward under section 2708(a) of Title 22,

and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien;

(T)(i) subject to section 1184(o) of this title, an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines--

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 7102 of Title 22;

(II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;

(III)(aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime;

(bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or

(cc) has not attained 18 years of age; and

(IV) the alien [1] would suffer extreme hardship involving unusual and severe harm upon removal; and

(ii) if accompanying, or following to join, the alien described in clause (i)--

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien;

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; or

(III) any parent or unmarried sibling under 18 years of age, or any adult or minor children of a derivative beneficiary of the alien, as of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement.

(U)(i) subject to section 1184(p) of this title, an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that--

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(ii) if accompanying, or following to join, the alien described in clause (i)--

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of Title 18); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes; or

(V) subject to section 1184(q) of this title, an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 1153(d) of this title) of a petition to accord a status under section 1153(a)(2)(A) of this title that was filed with the Attorney General under section 1154 of this title on or before December 21, 2000, if--

(i) such petition has been pending for 3 years or more; or

(ii) such petition has been approved, 3 years or more have elapsed since such filing date, and--

(I) an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 1153(a)(2)(A) of this title; or

(II) the alien's application for an immigrant visa, or the alien's application for adjustment of status under section 1255 of this title, pursuant to the approval of such petition, remains pending.

(16) The term "immigrant visa" means an immigrant visa required by this chapter and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this chapter.

(17) The term "immigration laws" includes this chapter and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens.

(18) The term "immigration officer" means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title.

(19) The term "ineligible to citizenship," when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time permanently debarred from becoming a citizen of the United States under section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65 Stat. 76), or under any section of this chapter, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.

(20) The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21) The term "national" means a person owing permanent allegiance to a state.

(22) The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(23) The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

(24) Repealed. Pub.L. 102-232, Title III, § 305(m)(1), Dec. 12, 1991, 105 Stat. 1750.

(25) The term "noncombatant service" shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.

(26) The term "nonimmigrant visa" means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this chapter.

(27) The term "special immigrant" means--

(A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(B) an immigrant who was a citizen of the United States and may, under section 1435(a) or 1438 of this title, apply for reacquisition of citizenship;

(C) an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who--

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of Title 26) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);

(D) an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: *Provided*, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status;

(E) an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3602(a)(1) of Title 22) enters into force [October 1, 1979], who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty [April 1, 1979], and who has performed faithful service as such an employee for one year or more;

(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force [October 1, 1979], has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who, on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone;

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977 [April 1, 1979], who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment;

(H) an immigrant, and his accompanying spouse and children, who--

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry;

(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after October 24, 1988, whichever is later;

(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) files a petition for status under this subparagraph no later than six months after the date of such death or six months after October 24, 1988, whichever is later;

(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after October 25, 1994, whichever is later; or

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family;

(J) an immigrant who is present in the United States--

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that--

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

(K) an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on October 1, 1991) for a period or periods aggregating--

(i) 12 years and who, if separated from such service, was never separated except under honorable conditions, or

(ii) 6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlisted to incur a total active duty service obligation of at least 12 years,

and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant;

(L) an immigrant who would be described in clause (i), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause--

(i) to an international organization described in paragraph (15)(G)(i) were treated as a reference to the North Atlantic Treaty Organization (NATO);

(ii) to a nonimmigrant under paragraph (15)(G)(iv) were treated as a reference to a nonimmigrant classifiable under NATO-6 (as a member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, a member of a civilian component attached to or employed by an Allied Headquarters under the "Protocol on the Status of International Military Headquarters" set up pursuant to the North Atlantic Treaty, or as a dependent); and

(iii) to the Immigration Technical Corrections Act of 1988 or to the Immigration and Nationality Technical Corrections Act of 1994 were a reference to the American Competitiveness and Workforce Improvement Act of 1998 [2]

(M) subject to the numerical limitations of section 1153(b)(4) of this title, an immigrant who seeks to enter the United States to work as a broadcaster in the United States for the International Broadcasting Bureau of the Broadcasting Board of Governors, or for a grantee of the Broadcasting Board of Governors, and the immigrant's accompanying spouse and children.

(28) The term "organization" means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.

(29) The term "outlying possessions of the United States" means American Samoa and Swains Island.

(30) The term "passport" means any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the admission of the bearer into a foreign country.

(31) The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

(32) The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

(33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

(34) The term "Service" means the Immigration and Naturalization Service of the Department of Justice.

(35) The term "spouse", "wife", or "husband" do not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.

(36) The term "State" includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(37) The term "totalitarian party" means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms "totalitarian dictatorship" and "totalitarianism" mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(38) The term "United States", except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(39) The term "unmarried", when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married.

(40) The term "world communism" means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

(41) The term "graduates of a medical school" means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine.

(42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 1157(e) of this title) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

(43) The term "aggravated felony" means--

(A) murder, rape, or sexual abuse of a minor;

(B) illicit trafficking in a controlled substance (as defined in section 802 of Title 21), including a drug trafficking crime (as defined in section 924(c) of Title 18);

(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of Title 18) or in explosive materials (as defined in section 841(c) of that title);

(D) an offense described in section 1956 of Title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $10,000;

(E) an offense described in--

(i) section 842(h) or (i) of Title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

(ii) section 922(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of Title 18 (relating to firearms offenses); or

(iii) section 5861 of Title 26 (relating to firearms offenses);

(F) a crime of violence (as defined in section 16 of Title 18, but not including a purely political offense) for which the term of imprisonment at[3] least one year;

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at[3] least one year;

(H) an offense described in section 875, 876, 877, or 1202 of Title 18 (relating to the demand for or receipt of ransom);

(I) an offense described in section 2251, 2251A, or 2252 of Title 18 (relating to child pornography);

(J) an offense described in section 1962 of Title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

(K) an offense that--

(i) relates to the owning, controlling, managing, or supervising of a prostitution business;

(ii) is described in section 2421, 2422, or 2423 of Title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

(iii) is described in any of sections 1581-1585 or 1588-1591 of Title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

(L) an offense described in--

(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of Title 18;

(ii) section 3121 of Title 50 (relating to protecting the identity of undercover intelligence agents); or

(iii) section 3121 of Title 50 (relating to protecting the identity of undercover agents);

(M) an offense that--

(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or

(ii) is described in section 7201 of Title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;

(N) an offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter [4]

(O) an offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of Title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15

years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.

(44)(A) The term "managerial capacity" means an assignment within an organization in which the employee primarily--

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(B) The term "executive capacity" means an assignment within an organization in which the employee primarily--

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

(45) The term "substantial" means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.

(46) The term "extraordinary ability" means, for purposes of subsection (a)(15)(O)(i), in the case of the arts, distinction.

(47)(A) The term "order of deportation" means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

(B) The order described under subparagraph (A) shall become final upon the earlier of--

(i) a determination by the Board of Immigration Appeals affirming such order; or

(ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where--

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

(49) The term "stowaway" means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.

(50) The term "intended spouse" means any alien who meets the criteria set forth in section 1154(a)(1)(A)(iii)(II)(aa)(BB), 1154(a)(1)(B)(ii)(II)(aa)(BB), or 1229b(b)(2)(A)(i)(III) of this title.

(51) The term "VAWA self-petitioner" means an alien, or a child of the alien, who qualifies for relief under--

(A) clause (iii), (iv), or (vii) of section 1154(a)(1)(A) of this title;

(B) clause (ii) or (iii) of section 1154(a)(1)(B) of this title;

(C) section 1186a(c)(4)(C) of this title;

(D) the first section of Public Law 89-732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty;

(E) section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note);

(F) section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act; or

(G) section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208).

(52) The term "accredited language training program" means a language training program that is accredited by an accrediting agency recognized by the Secretary of Education.

(b) As used in subchapters I and II--

(1) The term "child" means an unmarried person under twenty-one years of age who is--

(A) a child born in wedlock;

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years;

(F)(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen who is at least 25 years of age, at least 1 of whom personally saw and observed the child before or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence; *Provided*, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: *Provided further*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 1151(b) of this title; or

(G)(i) a child, younger than 16 years of age at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 1151(b) of this title, who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States by a United States citizen and spouse jointly or by an unmarried United States citizen who is at least 25 years of age, Provided, That--

(I) the Secretary of Homeland Security is satisfied that proper care will be furnished the child if admitted to the United States;

(II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;

(III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;

(IV) the Secretary of Homeland Security is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Secretary of Homeland Security may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents); and

(V) in the case of a child who has not been adopted--

(aa) the competent authority of the foreign state has approved the child's emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and

(bb) the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child's proposed residence; and

(ii) except that no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(iii) subject to the same provisos as in clauses (i) and (ii), a child who--

(I) is a natural sibling of a child described in clause (i), subparagraph (E)(i), or subparagraph (F)(i);

(II) was adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in clause (i), subparagraph (E)(i), or subparagraph (F)(i); and

(III) is otherwise described in clause (i), except that the child is younger than 18 years of age at the time a petition is filed on his or her behalf for classification as an immediate relative under section 1151(b) of this title.

(2) The terms "parent", "father", or "mother" mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) and paragraph (1)(G)(i) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

(3) The term "person" means an individual or an organization.

(4) The term "immigration judge" means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 1229a of this title. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.

(5) The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(c) As used in subchapter III--

(1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 1431 and 1432 of this title, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

(2) The terms "parent", "father", and "mother" include in the case of a posthumous child a deceased parent, father, and mother.

(d) Repealed. Pub.L. 100-525, § 9(a)(3), Oct. 24, 1988, 102 Stat. 2619.

(e) For the purposes of this chapter--

(1) The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.

(2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

(3) Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

(f) For the purposes of this chapter--

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established is, or was--

(1) a habitual drunkard;

(2) Repealed. Pub.L. 97-116, § 2(c)(1), Dec. 29, 1981, 95 Stat. 1611.

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 1182(a) of this title; or subparagraphs (A) and (B) of section 1182(a)(2) of this title and subparagraph (C) thereof of such section [5] (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4) one whose income is derived principally from illegal gambling activities;

(5) one who has been convicted of two or more gambling offenses committed during such period;

(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43)); or

(9) one who at any time has engaged in conduct described in section 1182(a)(3)(E) of this title (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 1182(a)(2)(G) of this title (relating to severe violations of religious freedom).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

(g) For the purposes of this chapter any alien ordered deported or removed (whether before or after the enactment of this chapter) who has left the United States, shall be considered to have been deported or removed in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.

(h) For purposes of section 1182(a)(2)(E) of this title, the term "serious criminal offense" means--

(1) any felony;

(2) any crime of violence, as defined in section 16 of Title 18; or

(3) any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.

(i) With respect to each nonimmigrant alien described in subsection (a)(15)(T)(i)--

(1) the Secretary of Homeland Security, the Attorney General, and other Government officials, where appropriate, shall provide the alien with a referral to a nongovernmental organization that would advise the alien regarding the alien's options while in the United States and the resources available to the alien; and

(2) the Secretary of Homeland Security shall, during the period the alien is in lawful temporary resident status under that subsection, grant the alien authorization to engage in employment in the United States and provide the alien with an "employment authorized" endorsement or other appropriate work permit.

CREDIT(S)

(June 27, 1952, c. 477, Title I, § 101, 66 Stat. 166; Pub.L. 85-316, §§ 1, 2, Sept. 11, 1957, 71 Stat. 639; Pub.L. 85-508, § 22, July 7, 1958, 72 Stat. 351; Pub.L. 86-3, § 20(a), Mar. 18, 1959, 73 Stat. 13; Pub.L. 87-256, § 109(a), (b), Sept. 21, 1961, 75 Stat. 534; Pub.L. 87-301, §§ 1, 2, 7, Sept. 26, 1961, 75 Stat. 650, 653; Pub.L. 89-236, §§ 8, 24, Oct. 3, 1965, 79 Stat. 916, 922; Pub.L. 89-710, Nov. 2, 1966, 80 Stat. 1104; Pub.L. 91-225, § 1, Apr. 7, 1970, 84 Stat. 116; Pub.L. 94-155, Dec. 16, 1975, 89 Stat. 824; Pub.L. 94-484, Title VI, § 601(b), (e), Oct. 12, 1976, 90 Stat. 2301, 2302; Pub.L. 94-571, § 7(a), Oct. 20, 1976, 90 Stat. 2706; Pub.L. 94-484, Title VI, § 602(c), Oct. 12, 1976, as added Pub.L. 95-83, Title III, § 307(q)(3), Aug. 1, 1977, 91 Stat. 395; Pub.L. 95-105, Title I, § 109(b)(3), Aug. 17, 1977, 91 Stat. 847; Pub.L. 96-70, Title III, § 3201(a), Sept. 27, 1979, 93 Stat. 496; Pub.L. 96-212, Title II, § 201(a), Mar. 17, 1980, 94 Stat. 102; Pub.L. 97-116, §§ 2, 5(d)(1), 18(a), Dec. 29, 1981, 95 Stat. 1611, 1614, 1619; Pub.L. 98-47, § 3, Oct. 30, 1984, 98 Stat. 3435; Pub.L. 99-505, § 1, Oct. 21, 1986, 100 Stat. 1806; Pub.L. 99-603, Title III, §§ 301(a), 312, 315(a), Nov. 6, 1986, 100 Stat. 3411, 3434, 3439; Pub.L. 99-653, §§ 2, 3, Nov. 14, 1986, 100 Stat. 3655; Pub.L. 100-459, Title II, § 210(a), Oct. 1, 1988, 102 Stat. 2203; Pub.L. 100-525, §§ 2(o)(1), 8(b), 9(a), Oct. 24, 1988, 102 Stat. 2613, 2617, 2619; Pub.L. 100-690, Title VII, § 7342, Nov. 18, 1988, 102 Stat. 4469; Pub.L. 101-162, Title VI, § 611(a), Nov. 21, 1989, 103 Stat. 1038; Pub.L. 101-238, § 3(a), Dec. 18, 1989, 103 Stat. 2100; Pub.L. 101-246, Title I, § 131(b), Feb. 16, 1990,104 Stat. 31; Pub.L. 101-649, Title I, §§ 123, 151(a), 153(a), 162(f)(2)(A), Title II, §§ 203(c), 204(a), (c), 205(c)(1), (d), (e), 206(c), 207(a), 208, 209(a), Title IV, § 407(a)(2), Title V, §§ 501(a), 509(a), Title VI, § 603(a)(1), Nov. 29, 1990, 104 Stat. 4995, 5004, 5005, 5012, 5018 to 5020, 5022, 5023, 5026, 5027, 5040, 5048, 5051, 5082; Pub.L. 102-110, § 2(a), Oct. 1, 1991, 105 Stat. 555; Pub.L. 102-232, Title II, §§ 203(a), 205(a) to (c), 206(b), (c)(1), (d), 207(b), Title III, §§ 302(e)(8)(A), 303(a)(5)(A), (7)(A), (14), 305(m)(1), 306(a)(1), 309(b)(1), (4), Dec. 12, 1991, 105 Stat. 1737, 1740, 1741, 1746 to 1748, 1750, 1751, 1758; Pub.L. 103-236, Title I, § 162(h)(1), Apr. 30, 1994, 108 Stat. 407; Pub.L. 103-322, Title XIII, § 130003(a), Sept. 13, 1994, 108 Stat. 2024; Pub.L. 103-337, Div. C, Title XXXVI, § 3605, Oct. 5, 1994, 108 Stat. 3113; Pub.L. 103-416, Title II, §§ 201, 202, 214, 219(a), 222(a), Oct. 25, 1994, 108 Stat. 4310, 4311, 4314, 4316, 4320; Pub.L. 104-51, § 1, Nov. 15, 1995, 109 Stat. 467; Pub.L. 104-132, Title IV, § 440(b), (e), Apr. 24, 1996, 110 Stat. 1277; Pub.L. 104-208, Div. C, Title I, § 104(a), Title III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a), (b), 322(a)(1), (2)(A), 361(a), 371(a), Title VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), Sept. 30, 1996, 110 Stat. 3009-555, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629, 3009-644, 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723; Pub.L. 105-54, § 1(a), Oct. 6, 1997, 111 Stat. 1175; Pub.L. 105-119, Title I, § 113, Nov. 26, 1997, 111 Stat. 2460; Pub.L. 105-277, Div. C, Title IV, § 421, Div. G, Title XXII, § 2222(e), Oct. 21, 1998, 112 Stat. 2681-657, 2681-819; Pub.L. 105-319, § 2(b)(1), (e)(2), formerly (d)(2), Oct. 30, 1998, 112 Stat. 3014, 3015; renumbered § 2(e)(2), Pub.L. 108-449, § 1(a)(3)(A), Dec. 10, 2004, 118 Stat. 3470; amended Pub.L. 106-95, § 2(a), (c), Nov. 12, 1999, 113 Stat. 1312; Pub.L. 106-139, § (1)(a), (b)(1), Dec. 7, 1999, 113 Stat. 1696; Pub.L. 106-279, Title III, § 302(a), (c), Oct. 6, 2000, 114 Stat. 838, 839; Pub.L. 106-386, Div. A, § 107(e)(1), (4), Div. B, Title V, §§ 1503(a), 1513(b), Oct. 28, 2000, 114 Stat. 1477, 1479, 1518, 1534; Pub.L. 106-395, Title II, § 201(a)(1), Oct. 30, 2000, 114 Stat. 1633; Pub.L. 106-409, § 2(a), Nov. 1, 2000, 114 Stat. 1787; Pub.L. 106-536, § 1(a), Nov. 22, 2000, 114 Stat. 2560; Pub.L. 106-553, § 1(a)(2) [Title XI, § 1102(a), 1103(a)], Dec. 21, 2000, 114 Stat. 2762, 2762A-142, 2762A-143; Pub.L. 107-125, § 2(b), Jan. 16, 2002, 115 Stat. 2403; Pub.L. 107-274, § 2(a), (b), Nov. 2, 2002, 116 Stat. 1923; Pub.L. 108-77, Title IV, § 402(a)(1), Sept. 3, 2003, 117 Stat. 939; Pub.L. 108-99, § 1, Oct. 15, 2003, 117 Stat. 1176; Pub.L. 108-193, §§ 4(b)(1), (5), 8(a)(1), Dec. 19, 2003, 117 Stat. 2878, 2879, 2886; Pub.L. 108-449, § 1(a)(2)(B), (b)(1), Dec. 10, 2004, 118 Stat. 3469, 3470; Pub.L. 108-458, Title V, § 5504, Dec. 17, 2004, 118 Stat. 3741; Pub.L. 109-13, Div. B, Title V, § 501(a), May 11, 2005, 119 Stat. 321; Pub.L. 109-90, Title

V, § 536, Oct. 18, 2005, 119 Stat. 2087; Pub.L. 109-162, Title VIII, §§ 801, 805(d), 811, 822(c)(1), Jan. 5, 2006, 119 Stat. 3053, 3056, 3057, 3063; Pub.L. 109-248, Title IV, § 402(b), July 27, 2006, 120 Stat. 623; Pub.L. 110-229, Title VII, § 702(j)(1) to (3), May 8, 2008, 122 Stat. 866; Pub.L. 110-391, § 2(a), Oct. 10, 2008, 122 Stat. 4193; Pub.L. 110-457, Title II, §§ 201(a), 235(d)(1), Dec. 23, 2008, 122 Stat. 5052, 5079; Pub.L. 111-9, § 1, Mar. 20, 2009, 123 Stat. 989; Pub.L. 111-83, Title V, § 568(a)(1), Oct. 28, 2009, 123 Stat. 2186; Pub.L. 111-287, § 3, Nov. 30, 2010, 124 Stat. 3058; Pub.L. 111-306, § 1(a), Dec. 14, 2010, 124 Stat. 3280; Pub.L. 112-176, § 3, Sept. 28, 2012, 126 Stat. 1325; Pub.L. 113-4, Title VIII, § 801, Title XII, §§ 1221, 1222, Mar. 7, 2013, 127 Stat. 110, 144; Pub.L. 113-76, Div. K, Title VII, § 7083, Jan. 17, 2014, 128 Stat. 567.)

Footnotes

1 So in original. The words "the alien" probably should not appear.

2 So in original. Probably should be followed by "; or".

3 So in original. Probably should be preceded by "is".

4 So in original. Probably should be followed by a semicolon.

5 So in original. The phrase "of such section" probably should not appear.

8 U.S.C.A. § 1101, 8 USCA § 1101

Current through P.L. 116-41.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 1. Of Crimes and Punishments (Refs & Annos)
Title 8. Of Crimes Against the Person
Chapter 4. Robbery (Refs & Annos)

West's Ann.Cal.Penal Code § 211

§ 211. Definition

Currentness

Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

Credits
(Enacted in 1872.)

West's Ann. Cal. Penal Code § 211, CA PENAL § 211
Current with urgency legislation through Ch. 161 of the 2019 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document