

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 19 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JOSE JESUS MERCADO RAMIREZ,

Petitioner,

v.

MATTHEW G. WHITAKER, Acting  
Attorney General,

Respondent.

No. 14-72415

Agency No. A201-034-249

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted September 10, 2018\*\*  
San Francisco, California

Before: WALLACE, RAWLINSON, and WATFORD, Circuit Judges.

Jose Jesus Mercado Ramirez petitions for review of his removal proceedings in the Board of Immigration Appeals (Board). We have jurisdiction under 28 U.S.C. § 1252, and we deny the petition.

Mercado argues that the Board erred by retroactively applying *In re Leal*, 26

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

I. & N. Dec. 20, 27 (B.I.A. 2012) (*Leal I*) to conclude that his Arizona conviction for felony endangerment was a crime involving moral turpitude, that we should not apply our decision in *Leal v. Holder*, 771 F.3d 1140, 1146 (9th Cir. 2014) (*Leal II*) to conclude that Arizona endangerment is a crime involving moral turpitude for similar reasons, and that the definition of “crime involving moral turpitude” is unconstitutionally vague as applied to non-fraudulent crimes. Mercado’s first and third arguments are foreclosed by our decision in *Olivas-Mottas v. Whitaker*, \_\_\_ F.3d \_\_\_, No. 14-70543 (9th Cir. \_\_\_, 2018). As to Mercado’s second argument, we did not decide in *Olivas-Mottas* whether *Leal II* changed the law and thus had a retroactive effect. But we do not need to decide that issue in this case because *Leal I* did not change the law, and Mercado has not argued to us that the Board erred by applying *Leal I* for any reason other than retroactivity and vagueness.

**PETITION DENIED.**

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*Mercado Ramirez v. Whitaker*, No. 14-72415

WATFORD, Circuit Judge, dissenting:

For the reasons stated in my dissent in *Olivas-Motta v. Whitaker*, \_\_ F.3d \_\_, No. 14-70543 (9th Cir. 2018), I would grant Jose Jesus Mercado Ramirez's petition for review and remand so that the Board of Immigration Appeals can analyze the status of his conviction for reckless endangerment under the law as it stood in 2001, when he pleaded guilty.