

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

\_\_\_\_\_  
No. 15-60067  
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United States Court of Appeals  
Fifth Circuit

**FILED**

May 4, 2016

Lyle W. Cayce  
Clerk

OMAR ALBERTO HERNANDEZ,

Petitioner,

v.

LORETTA LYNCH, U.S. ATTORNEY GENERAL,

Respondent.

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Petition for Review of an Order of the  
Board of Immigration Appeals  
\_\_\_\_\_

Before HIGGINBOTHAM, PRADO, and GRAVES, Circuit Judges.

PER CURIAM:

Petitioner Omar Alberto Hernandez, a citizen of Mexico, was determined ineligible for cancellation of removal pursuant to 8 U.S.C. § 1229b(b)(1)(C) after an immigration judge concluded that his conviction for deadly conduct under Texas Penal Code § 22.05(a) was categorically a crime involving moral turpitude (“CIMT”). Petitioner appealed to the Board of Immigration Appeals (“BIA”), which applied the “realistic probability” approach to hold that deadly conduct was categorically a CIMT and dismissed the appeal.<sup>1</sup> For the reasons explained in *Mercado v. Lynch*, 14-60539, slip op. at 3-5 (5th Cir. May 4, 2016),

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<sup>1</sup> *Matter of Hernandez*, 26 I. & N. Dec. 464 (BIA 2015).

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we hold that the BIA applied the incorrect standard in analyzing whether Petitioner's conviction constitutes a CIMT. We reverse and remand for the BIA to analyze Petitioner's convictions under the minimum reading approach.