Matter of Christian Callos MERCADER, Respondent

Decided October 27, 2026

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

A conviction for assault and battery in the second degree under section 16-3-600(D)(1) of the Code of Laws of South Carolina, which requires a reckless mental state and the actual or attempted infliction of "moderate bodily injury," is categorically for a crime involving moral turpitude.

FOR THE RESPONDENT: Kamala W. Sessoms, Esquire, Atlanta, Georgia

FOR THE DEPARTMENT OF HOMELAND SECURITY: Pavielle A. Bookman, Assistant Chief Counsel

BEFORE: Board Panel: HUNSUCKER and GEMOETS, Appellate Immigration Judges, PICOS, Temporary Appellate Immigration Judge.

GEMOETS, Appellate Immigration Judge:

In a decision dated June 6, 2025, the Immigration Judge granted the respondent's motion to terminate proceedings, concluding that the Department of Homeland Security ("DHS") had not demonstrated that the respondent's South Carolina conviction for assault and battery was for a crime involving moral turpitude. DHS appeals the Immigration Judge's decision, and the respondent opposes the appeal.[1] The appeal will be sustained, the Immigration Judge's decision will be vacated, and the case will be remanded to the Immigration Judge for further proceedings.

The respondent, a native and citizen of the Philippines, was admitted to the United States as a child of an alien resident on March 1, 2020. On

[1] The respondent requests summary dismissal of DHS' appeal, arguing that the notice of appeal was untimely. *See Matter of Iskandarani*, 29 I&N Dec. 26, 28 (BIA 2025) ("[W]hen an Immigration Judge issues an oral decision, the 30-day appeal filing period is calculated from the date the decision is rendered and is unaffected by the subsequent mailing of a memorandum summarizing the oral decision."). Although the Immigration Judge stated an intent to issue a decision on the motion to terminate at the June 2, 2025, hearing, she did not issue an oral decision on this date. *See generally Matter of A-P-*, 22 I&N Dec. 468, 474–75 (BIA 1999) (discussing the required contents of an Immigration Judge's decision); 8 C.F.R. § 1240.12(a) (stating that an Immigration Judge's decision may be oral or written). Rather, a written order was issued on June 6, 2025. DHS filed a timely appeal on July 7, 2025. *See* 8 C.F.R. § 1003.38(b)(3), (c).

February 11, 2025, the respondent was convicted of assault and battery in the second degree in violation of section 16-3-600(D)(1) of the Code of Laws of South Carolina. Based on this conviction, DHS charged the respondent as removable under section 237(a)(2)(A)(i) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1227(a)(2)(A)(i) (2024), for having been convicted of a crime involving moral turpitude committed within 5 years after admission and for which a sentence of 1 year or longer may be imposed. The respondent subsequently filed a motion to terminate proceedings, and on June 6, 2025, the Immigration Judge granted the respondent's motion, finding that DHS failed to establish that the respondent's conviction is for a crime involving moral turpitude.

Because the respondent's conviction is the basis for his charge of removability, the burden rests with DHS to prove that the conviction is for a crime involving moral turpitude. *See* 8 C.F.R. § 1240.8(a) (2026). Whether a conviction constitutes a crime involving moral turpitude is a legal question subject to de novo review. *Lauture v. U.S. Att'y Gen.*, 28 F.4th 1169, 1172 (11th Cir. 2022); *Matter of Vucetic*, 28 I&N Dec. 276, 277 (BIA 2021); *see also* 8 C.F.R. § 1003.1(d)(3)(ii).

At the time of the respondent's conviction, section 16-3-600(D)(1) of the Code of Laws of South Carolina provided:

> A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and:
>
> (a) moderate bodily injury to another person results or moderate bodily injury to another person could have resulted; or
>
> (b) the act involves the nonconsensual touching of the private parts of a person, either under or above clothing.

S.C. Code Ann. § 16-3-600(D)(1) (2025). South Carolina defines "moderate bodily injury" as

> physical injury that involves prolonged loss of consciousness, or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily organ, or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.

S.C. Code Ann. § 16-3-600(A)(2). South Carolina defines "private parts" as "the genital area or buttocks of a male or female or the breasts of a female." S.C. Code Ann. § 16-3-600(A)(3).

To determine whether a State criminal conviction is for a crime involving moral turpitude, we apply the categorical approach to determine whether the elements of the offense categorically "fit[] within the generic definition of a crime involving moral turpitude." *Matter of Silva-Trevino*, 26 I&N Dec. 826, 831 (BIA 2016); *see also Fajardo v. U.S. Att'y Gen.*, 659 F.3d 1303, 1308–09 (11th Cir. 2011) (explaining that the application of the categorical approach is proper for determining whether an alien was convicted of a crime involving moral turpitude). We "focus on the minimum conduct that has a realistic probability of being prosecuted under the statute of conviction, rather than on the facts underlying the respondent's particular violation of that statute." *Matter of Silva-Trevino*, 26 I&N Dec. at 831; *see also Lauture v. U.S. Att'y Gen.*, 28 F.4th 1169, 1175 (11th Cir. 2022) ("Whether a crime involves the depravity or fraud necessary to be one of moral turpitude depends upon the inherent nature of the offense, as defined in the relevant statute, rather than the circumstances surrounding [an offender's] particular conduct." (quoting *Itani v. Ashcroft*, 298 F.3d 1213, 1215–16 (11th Cir. 2002))).

The parties agree that section 16-3-600(D)(1) is a divisible statute, as subparagraphs (a) and (b) describe separate offenses with alternative elements. *See Mathis v. United States*, 579 U.S. 500, 505 (2016). However, the Immigration Judge found, under the modified categorical approach, that the record of conviction did not specify under which provision of section 16-3-600(D)(1) the respondent was convicted. For the reasons discussed below, we conclude that both subparagraphs (a) and (b) of section 16-3-600(D)(1) involve moral turpitude, and thus the respondent's conviction is categorically for a crime involving moral turpitude. *See Matter of Solon*, 24 I&N Dec. 239, 241 (BIA 2007) (stating that where the specific provision under which an alien was convicted is not discernible from the record, "the conviction will be found to be for a crime involving moral turpitude only if the full range of the conduct prohibited in the statute supports such a finding").

A crime involves "moral turpitude" if its elements require reprehensible conduct committed with a culpable mental state. *Matter of Silva-Trevino*, 26 I&N Dec. at 834. Conduct is "reprehensible" if it is "inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Id*., *see also Itani*, 298 F.3d at 1215 (defining a crime of moral turpitude as "[a]n act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man" (quoting *United States v. Gloria*, 494 F.2d 477, 481 (5th Cir. 1974))). A culpable mental state is one that

requires deliberation or consciousness, such as intent, knowing, willfulness, or recklessness. *Matter of Jimenez-Cedillo*, 27 I&N Dec. 1, 3 (BIA 2017), *remanded on other grounds by* 885 F.3d 292 (4th Cir. 2018); *see also Gelin v. U.S. Att'y Gen.*, 837 F.3d 1236, 1240–41 (11th Cir. 2016) (stating that "criminal reckless conduct" can constitute crimes involving moral turpitude).

The respondent's statute of conviction does not specify a mental state required for a conviction for assault and battery in the second degree. *See* S.C. Code Ann. § 16-3-600(D)(1). However, the Supreme Court of South Carolina has held in *United States v. Clemons* that while the attempt offenses in the statute may require specific intent, "some of the criminal acts proscribed by [section] 16-3-600(D) may be committed with general criminal intent, including the mental state of recklessness." 901 S.E.2d 280, 283 (S.C. 2024). Although simple assault and battery offenses committed with a general intent are not considered crimes involving moral turpitude, this general rule does not apply when an offense "involves some aggravating factor that indicates the perpetrator's moral depravity." *Matter of Wu*, 27 I&N Dec. 8, 10–11 (BIA 2017) (quoting *Matter of Ahortalejo-Guzman*, 25 I&N Dec. 465, 466 (BIA 2011)). Specifically, we have held that an offense requiring a mental state of recklessness is morally turpitudinous if coupled with a risk of "sufficiently grave" potential harm. *Matter of O.A. Hernandez*, 26 I&N Dec. 464, 467 (BIA 2015), *rev'd and remanded on other grounds sub nom. Hernandez v. Lynch*, 823 F.3d 279 (5th Cir. 2016).

The Eleventh Circuit has likewise held that recklessness is a "sufficiently culpable mental state" for an offense to constitute a crime involving moral turpitude and that the offense need not have resulted in actual injury. *Keungne v. U.S. Att'y Gen.*, 561 F.3d 1281, 1286–87 (11th Cir. 2009); *see also Matter of O.A. Hernandez*, 26 I&N Dec. at 467 (noting that "the actual infliction of . . . harm is not determinative of the moral turpitude question" and a "reckless mental state [need not] be accompanied by the death or serious bodily injury of a victim in order to qualify as a crime involving moral turpitude." (alteration in original) (quoting *Matter of Leal*, 26 I&N Dec. 20, 25 (BIA 2012))). The court has further held that when a perpetrator acts recklessly and "endangers the bodily safety of another person," his "good fortune in not injuring or killing someone does not change the quality of his actions or the culpability of his mental state." *Keungne*, 561 F.3d at 1287.

The respondent has not demonstrated that criminal misconduct with a mental state below recklessness is sufficient for a conviction under section 16-3-600(D)(1). While South Carolina has recognized in other contexts that general intent "usually takes the form of recklessness . . . or negligence,"

State v. Perry, 892 S.E.2d 273, 278 (S.C. 2023), nothing in *Clemons* suggests that a mental state below recklessness would sustain a conviction. Additionally, the respondent has not demonstrated that South Carolina actually prosecutes offenders under section 16-3-600(D)(1) for conduct involving a mental state less than recklessness. *See Lauture v. U.S. Att'y Gen.,* 28 F.4th 1169, 1176 (11th Cir. 2022). Thus, we conclude that the minimum culpable mental state required for a conviction under section 16-3-600(D)(1) of the Code of Laws of South Carolina is recklessness and that this mental state falls within conduct that may constitute a crime involving moral turpitude.

In addition to a culpable mental state, the respondent's statute of conviction involves reprehensible conduct. The degree of actual or potential harm required for a conviction under both subparagraphs (a) and (b) of section 16-3-600(D)(1) of the Code of Laws of South Carolina—"moderate bodily injury" and "nonconsensual touching of the private parts of a person"—is "sufficiently grave to make it reprehensible." *Matter of O.A. Hernandez*, 26 I&N Dec. at 467.

We disagree with the Immigration Judge's determination that causing, or attempting to cause, "moderate bodily injury" does not rise to the level of serious bodily injury typically found by this Board to constitute a crime involving moral turpitude. Actual infliction of serious bodily injury is not a requirement for an assault offense to constitute a crime involving moral turpitude. *See Keungne*, 561 F.3d at 1286–87 (holding that an offense requiring reckless conduct that "endangers the bodily safety of another person" was a crime involving moral turpitude); *see also Matter of Wu*, 27 I&N Dec. at 15 (holding that assault causing "great bodily injury," which is defined as "significant or substantial injury," constitutes a crime involving moral turpitude).

The actual or attempted infliction of "moderate bodily injury"—which includes prolonged loss of consciousness, temporary or moderate disfigurement, temporary loss of the function of a bodily organ, or a fracture or dislocation, S.C. Code Ann. § 16-3-600(A)(2)—"is a base act that transgresses the socially accepted rules of morality and breaches the individuals ethical duty to society." *Matter of O.A. Hernandez*, 26 I&N Dec. at 467 (quoting *Matter of Leal*, 26 I&N Dec. at 25). It therefore operates as an aggravating factor that, when coupled with a reckless mental state, supports the finding of moral turpitude. *See Matter of Sejas*, 24 I&N Dec. 236, 237 (BIA 2007) ("Although as a general rule, a simple assault and battery offense does not involve moral turpitude, an aggravating factor can alter [the Board's] determination."). While the Immigration Judge found that

the respondent was not convicted of a greater offense and his conviction record is marked as "non-violent," the seriousness of the conduct or the severity of the sentence imposed is not determinative of whether a statutory offense is a crime involving moral turpitude. *See Matter of O.A. Hernandez*, 26 I&N Dec. at 465.

We further disagree with the Immigration Judge that subparagraph (b) of section 16-3-600(D)(1) of the Code of Laws of South Carolina does not necessarily describe a crime involving moral turpitude. Section 16-3-600(D)(1)(b) criminalizes unlawfully injuring, or offering or attempting to injure, another person if the act involves the "nonconsensual touching of the private parts of a person," where the term "private parts" is defined to mean "the genital area or buttocks of a male or female or the breasts of a female." S.C. Code § 16-3-600(A)(3), (D)(1)(b). This Board has long considered nonconsensual sexual conduct to be morally reprehensible. *See, e.g.*, *Matter of Jimenez-Cedillo*, 27 I&N Dec. at 4; *Matter of Z-*, 7 I&N Dec. 253, 255 (BIA 1956); *Matter of S-*, 5 I&N Dec. 686, 687–88 (BIA 1954). Thus, even the least of the acts criminalized under this provision constitute morally turpitudinous conduct.

Based on the foregoing, we conclude that a conviction for assault and battery in the second degree under section 16-3-600(D)(1) of the Code of Laws of South Carolina, which requires a reckless mental state and the actual or attempted infliction of "moderate bodily injury," is categorically for a crime involving moral turpitude. DHS has therefore satisfied its burden of demonstrating that the respondent's conviction renders him removable under section 237(a)(2)(A)(i) of the INA, 8 U.S.C. § 1227(a)(2)(A)(i).[2]

ORDER: DHS' appeal is sustained, the Immigration Judge's decision granting the respondent's motion to terminate is vacated, and the removal proceedings are reinstated.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

[2] There is no dispute that the respondent's offense was committed within 5 years of admission and that a sentence of 1 year or longer may be imposed for the conviction. *See* S.C. Code Ann. § 16-3-600(D)(2) (setting a maximum sentence of 3 years' imprisonment).