

Law Office of

Charles Medina

LPR Ordered Removed by IJ & BIA Due to Aggravated Felony was Granted Relief After Ninth Circuit Order

In 2003, Client was charged with “possession or control of child pornography” in violation of California Penal Code (PC) § 311.11(a). He pleaded guilty to the charge and was sentenced to a few days in jail and probation. In 2013, the Immigration Judge ordered Client’s removal because he had determined that the PC § 311.11(a) conviction was an aggravated felony based on the Board of Immigration Appeals’ (BIA) decision in *Matter of R-A-M-*, 25 I&N Dec. 657 (BIA 2012). Through prior counsel, Client appealed to the BIA but the BIA dismissed his appeal.

Client then hired us to file a petition for review with the Ninth Circuit Court of Appeals. In order to qualify as an aggravated felony, the court must compare the elements of California PC § 311.11(a) with the elements of the federal child pornography offense. PC § 311.11(a) would be an aggravated felony if its elements are the same as or narrower than those of the federal child pornography offense.

We argued before the Ninth Circuit that PC § 311.11(a) was broader than the federal offense based on *Tecklenburg v. Appellate Division*, 169 Cal.App.4th 1402 (3rd Dist. 2009), wherein the California Court of Appeals had compared the elements of PC § 311.11(a) with those of the federal offense.

Disclaimer: This material is not intended to provide legal advice on any specific concern that the reader may have. The successful outcome of the case described above does not in any way guarantee a similar outcome in any specific legal matter concerning the reader. The reader should seek the advice of any counsel if he or she has a specific immigration problem.
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6281 Beach Blvd., Suite 325, Buena Park, CA 9062

Telephone: 714-786-6835 • Fax: 714-922-6136

Website: www.medinalawgroup.net • Email: charles@medinalawgroup.net

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However, while Client's case was pending before the Ninth Circuit, the court issued its decision in *Chavez-Solis v. Lynch*, 803 F.3d 1004 (9th Cir. 2015), which held that a PC § 311.11(a) conviction was not an aggravated felony because it was broader than the federal offense. Because the issues and criminal laws involved in Client's case and in *Chavez-Solis* were identical and the arguments were similar to some extent, the Ninth Circuit remanded Client's case to the BIA to give the BIA the opportunity to correct its previous decision.

Thus, in March 2016, the BIA applied the ruling in *Chavez-Solis* and terminated Client's removal proceedings. Client has successfully retained his permanent resident status.

Please see the attachment(s) in the next page(s).

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U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

**Medina, Charles Learned Ala
Law Office of Charles Medina
6281 Beach Blvd., Suite 325
Buena Park, CA 90621**

**DHS/ICE - Office of Chief Counsel
10400 Rancho Road
Adelanto, CA 92301**

Name:



A



Date of this notice: 3/10/2016

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Holmes, David B.

bashorea

Userteam: Docket

Falls Church, Virginia 22041

File: A [REDACTED] – Adelanto, CA

Date:

MAR 10 2016

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Charles Learned A. Medina, Esquire

APPLICATION: Removability; termination of proceedings

This case is before the Board pursuant to a January 27, 2016, order of the United States Court of Appeals for the Ninth Circuit which granted the parties joint motion to vacate the Board's January 29, 2015, decision and remand the case in light of intervening Ninth Circuit precedent in *Chavez-Solis v. Lynch*, 803 F.3d 1004 (9th Cir. 2015) (holding that a conviction for possession of child pornography under Calif. Penal Code § 311.11(a) is not an aggravated felony). As the respondent was convicted under the same statute at issue in *Chavez-Solis*, and was only charged with removal for an aggravated felony based upon that conviction, the removal proceedings against the respondent will be terminated. Accordingly, the following order will be issued.

ORDER: The removal proceedings against the respondent are hereby terminated.

[REDACTED]
FOR THE BOARD