

## Fake SSN Card Is Grounds For Deportation, 9th Circ. Says

By **Nicole Rosenthal**

Law360 (June 7, 2022, 7:56 PM EDT) -- The Ninth Circuit denied a Honduran man's bid to stay in the U.S., finding that his conviction in California for possessing a forged social security card with a counterfeit government seal is grounds for deportation as a crime involving moral turpitude.

Affirming an earlier decision from the Board of Immigration Appeals, a three-judge panel rejected Pedro Antonio Vasquez-Borjas' argument that the California statute he was convicted under has three clauses and that the intent to defraud is not contained in the clause that formed the basis of his conviction.

Instead, prior state court rulings make clear that the intent to defraud is not limited to a particular clause and proving that intent is necessary for a conviction under the statute, the panel ruled Monday, concluding that the state conviction is equivalent to the federal definition of forgery, which is a crime involving moral turpitude under the Immigration and Nationality Act.

"California law establishes that intent to defraud is an element of a Section 472 offense, including a charge based on possession," U.S. Circuit Judge Danielle J. Forrest wrote on behalf of the panel. "Therefore, we accept California's construction of its own law and conclude that intent to defraud is a necessary element of all convictions under Section 472."

Judge Forrest noted that California's sample jury instructions confirm that intent to defraud is a required element for any Section 472 offense.

"It is reasonable to read the statutory text as requiring that all prohibited acts be done 'with the intent to defraud another,'" she wrote.

Vasquez-Borjas had also argued that, even if his crime was considered as one involving moral turpitude, he would still be eligible for cancellation of removal under a petty-offense exception. The exemption may be granted to individuals who have committed only one crime with a maximum penalty of under a year and a sentence of less than six months.

But the Ninth Circuit said it couldn't make a ruling on that argument as Vasquez-Borjas didn't exhaust the argument in the lower courts.

The Board of Immigration Appeals had noted that while Vasquez-Borjas did not argue the exception, the exception appeared to "not apply" and the board did not address the argument further on the merits, according to the circuit court's decision.

The ruling comes as a blow to Vasquez-Borjas, who said that his teenage son — a U.S. citizen — would suffer if he were to be deported. Vasquez-Borjas was convicted of multiple crimes in the U.S. and was sentenced to 14 days in jail and two years of probation for the forgery conviction, according to the opinion.

Representatives for the U.S. government and Vasquez-Borjas didn't immediately respond to requests for comment.

U.S. Circuit Judges Conseulo M. Callahan and Danielle J. Forrest, as well as U.S. District Judge Carol Bagley Amon, sat on the panel for the Ninth Circuit.

Pedro Vasquez-Borjas is represented by Nicholas Hodges of Jones Day.

The U.S. government is represented by Michael Christopher Heyse of the U.S. Department of Justice Civil Division, Commercial Litigation Branch.

The case is Pedro Vasquez-Borjas v. Merrick Garland, case number 17-70867, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by JoVona Taylor.