

### NOT FOR PUBLICATION

MAR 05 2014

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

## UNITED STATES COURT OF APPEALS

#### FOR THE NINTH CIRCUIT

## CESAR MARROQUIN-IBARRA,

Petitioner,

V.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-72178

Agency No. A092-248-316

**MEMORANDUM**\*

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

Submitted March 3, 2014\*\*
Pasadena, California

Before: KOZINSKI, Chief Judge, GRABER, Circuit Judge, and

**ZOUHARY, District Judge.**\*\*\*

<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

<sup>\*\*\*</sup> The Honorable Jack Zouhary, District Judge for the U.S. District Court for the Northern District of Ohio, sitting by designation.

- 1. The Board of Immigration Appeals (BIA) didn't err in examining the criminal complaint and the abstract of judgment to determine that Marroquin-Ibarra had been convicted of elder abuse with a dangerous weapon. See 8 U.S.C. § 1229a(c)(3)(B); Taylor v. United States, 495 U.S. 575, 602 (1990); see also Cal. Penal Code §§ 368(b)(1), 12022(b)(1). Marroquin-Ibarra's claim that he didn't use a dangerous weapon is an impermissible collateral attack on his state court conviction. See Ramirez-Villalpando v. Holder, 645 F.3d 1035, 1041 (9th Cir. 2011).
- 2. The BIA didn't err in adopting the immigration judge's determination that elder abuse with a dangerous weapon is a crime of violence because the crime presents a "substantial risk that physical force . . . may be used" against another person. 18 U.S.C. § 16(b); see also 8 U.S.C. § 1101(a)(43)(F). Marroquin-Ibarra's argument that he lacked intent is belied by the fact that a conviction for elder abuse requires a finding that the defendant "willfully cause[d] or permit[ted] any elder . . . to suffer." Cal. Penal Code § 368(b)(1).

#### **DENIED.**