

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 21 2019

FOR THE NINTH CIRCUIT

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

ELISEO CRUZ CRUZ,

No. 13-72425

Petitioner,

Agency No. A092-727-799

v.

MEMORANDUM*

WILLIAM P. BARR, Attorney General,

Respondent.

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

Submitted February 19, 2019**

Before: FERNANDEZ, SILVERMAN, and WATFORD, Circuit Judges.

Eliseo Cruz Cruz, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's removal order. We have jurisdiction under 8 U.S.C. §1252. We review de novo questions of law. *Padilla-Martinez v. Holder*, 770 F.3d 825,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

830 (9th Cir. 2014). We lift the abeyance set by the August 17, 2018, order (Docket Entry No. 30). We grant the petition for review.

The agency ordered Cruz Cruz removed for having committed an aggravated felony crime of violence as described in 18 U.S.C. § 16. However, the BIA did not specify whether it made its determination under 18 U.S.C. § 16(a) or § 16(b), nor did it have the benefit of the Supreme Court’s decision in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), holding that the definition of “crime of violence” at 18 U.S.C. § 16(b) is impermissibly vague. Accordingly, we remand to the BIA to consider Cruz Cruz’s removability in light of *Dimaya*.

On August 17, 2018, the court removed Cruz Cruz’s counsel, Grace White, Esq., as counsel of record because she was not admitted to practice in the Ninth Circuit. White was ordered to provide contact information for the petitioners in her pending cases. On August 21, 2018, White informed the court that Cruz Cruz had been removed to Mexico, but she did not provide a forwarding address.

Within 14 days after the date of this order, respondent shall serve this memorandum on Cruz Cruz at his last known address and file a proof of service with the court. In serving this memorandum, respondent shall consult with any other agency that might possess knowledge of Cruz Cruz’s whereabouts.

PETITION FOR REVIEW GRANTED; REMANDED.