

Where a statute under which an alien was convicted is divisible, we look to the record of conviction, and other documents admissible as evidence in proving a criminal conviction, to determine whether the specific offense of which the alien was convicted will sustain a ground of removability under section 237(a)(2)(A)(iii) of the Act. The record of conviction includes the charging document, plea agreement, a verdict or judgment of conviction, a record of sentence, or a plea colloquy transcript. *See Matter of Vargas-Sarmiento*, 23 I&N Dec. 651 (BIA 2004); *see also Matter of Sweetser*, 22 I&N Dec. 709 (BIA 1999).

The conviction records relating to the conviction under section 2903.06(A) relate to count 2 of the Indictment which specifically provides that the respondent recklessly caused the death of the victim. Likewise, the conviction records relating to the convictions under section 2903.08(a)(2) relate to counts 4 and 6 of the Indictment which both specifically provide that the respondent recklessly caused serious physical harm to the victims. As a result, all the convictions are based on a mental state requiring recklessness.

This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. However, the Sixth Circuit has not addressed whether a conviction for aggravated vehicular homicide or vehicular assault, with a reckless *mens rea*, is sufficient to constitute a crime of violence as defined under 18 U.S.C. § 16. Likewise, the Supreme Court in *Leocal v. Ashcroft*, 543 U.S. 1 (2004), did not address whether a *mens rea* of recklessness was sufficient to constitute a crime of violence. Thus, in immigration cases arising within circuits that have not yet had occasion to consider this question, we will apply the standards adopted by the majority of the circuit courts. *See Matter of Yanez*, 23 I&N Dec. 390, 391 (BIA 2002).

The United States Court of Appeals for the Third Circuit, in *Oyebanji v. Gonzales*, 418 F.3d 260 (3d Cir. 2005), recently held that vehicular homicide requiring a *mens rea* of recklessness did not constitute a crime of violence as defined under 18 U.S.C. § 16. The Third Circuit Court of Appeals relied on the Supreme Court's decision in *Leocal v. Ashcroft*, *supra*, indicating that "accidental" conduct (which would seem to include reckless conduct) is not enough to qualify as a crime of violence. Additionally, the Third Circuit relied on the Supreme Court's reasoning that because 8 U.S.C. § 1101(h) identifies crimes of violence separately from any injury causing driving under the influence crime, then injury causing reckless driving offenses are not crimes of violence. *See Oyebanji v. Gonzales*, *supra* at 264. Likewise, the United States Court of Appeals for the Ninth Circuit, in *Lara-Cazares v. Gonzales*, 408 F.3d 1217 (9th Cir. 2005), held that gross vehicular manslaughter while intoxicated did not constitute a crime of violence and also relied on the Supreme Court's analysis in *Leocal v. Ashcroft*, *supra*. The United States Court of Appeals for the Fourth Circuit has addressed the issue in *Bejarano-Urrutia v. Gonzales*, 413 F.3d 444 (4th Cir. 2005), and the court held that an alien's conviction for involuntary manslaughter was not a crime of violence. Specifically, the Fourth Circuit Court found, relying on *Leocal v. Ashcroft*, *supra*, and *Jobson v. Ashcroft*, 326 F.3d 367, 373 (2d Cir. 2003), that a conviction for involuntary manslaughter