

which required a mental state of recklessness did not constitute a crime of violence. In *United States v. Vargas-Duran*, 356 F.3d 598 (5th Cir. 2004), the United States Court of Appeals for the Fifth Circuit determined that the respondent's conviction for intoxication assault was not a crime of violence because it did not require intentional use of force. Therefore, the necessary *mens rea* would be one of intent. Likewise, the Second Circuit Court of Appeals, in *Jobson v. Ashcroft*, 326 F. 3d 367 (2d Cir. 2003), found that manslaughter in the second degree for recklessly causing death was not a crime of violence because 18 U.S.C. § 16(b) contemplates the intentional use of force. Specifically, the Second Circuit stated that "section 16(b) contemplates only *intentional* conduct and refers only to those offenses in which there is a substantial likelihood that the perpetrator will *intentionally* employ physical force." *Id* at 373. As such, the Immigration Judge's conclusion that the respondent's convictions for aggravated vehicular homicide and vehicular assault, requiring a *mens rea* of recklessness, do not constitute crimes of violence as defined under 18 U.S.C. § 16 is not erroneous. Consequently, the Immigration Judge's termination of removal proceedings was not in error.

ORDER: The DHS' appeal is dismissed.

  
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