

**From:** (b)(6)  
**To:** OPLA HQ Personnel; OPLA Field Personnel  
**Subject:** Broadcast Message: Implementing Matter of Reyes, 28 I&N Dec. 52 (A.G. July 30, 2020)  
**Date:** Monday, October 5, 2020 2:57:26 PM

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*Disseminated on behalf of Ken Padilla and Adam V. Loiacono . . .*

On July 30, 2020, the Attorney General (AG) issued a published decision in *Matter of Reyes*, 28 I&N Dec. 52 (A.G. 2020), holding that if each means of violating a statute qualifies as an aggravated felony, an alien convicted under that statute is removable under INA § 237(a)(2)(A)(iii), even if the statute is categorically “overbroad” as to any individual subparagraphs of the aggravated felony definition. Applying that holding to the facts of the respondent’s case, the AG concluded that her conviction for second degree grand larceny under N.Y. Penal Law § 155.40(1) is an aggravated felony because every means of violating the statute constitutes an aggravated felony, either theft or fraud under INA § 101(a)(43)(G) and (M)(i), respectively. *See* 28 I&N Dec. at 65.

The respondent was convicted under N.Y. Penal Law § 155.40(1), which criminalizes eight types of wrongful taking. *Id.* at 56, 63. DHS charged her with removability under INA § 237(a)(2)(A)(iii) for having been convicted of an aggravated felony theft offense, INA § 101(a)(43)(G), or aggravated felony fraud offense, INA § 101(a)(43)(M)(i). *Id.* at 56. On referral, the AG concluded that neither the INA nor applicable caselaw requires that the means of violating an indivisible criminal statute correspond to one, and only one, of the aggravated felony subparagraphs at INA § 101(a)(43)(A)–(U), *see id.* at 59–60; this holding applies “even if the strictures of the categorical approach obscure the specific offense committed,” *see id.* at 62. The AG also determined that application of his holding to the respondent’s case would not violate retroactivity principles, as it did not depart from settled practice, and that anti-retroactivity principles generally do not apply to a litigant whose case results in a precedent resolving an open legal question. *See id.* at 66–67. The AG vacated the decision terminating proceedings and remanded for further proceedings. *Id.* at 67.

In light of the AG’s opinion, OPLA attorneys should consider the practice pointers below. A more detailed summary and practice pointers can be found [here](#).

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