No. 19-627

In the Supreme Court of the United States

ANTONIO ISLAS-VELOZ, PETITIONER

v.

WILLIAM P. BARR, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

NOEL J. FRANCISCO
Solicitor General
Counsel of Record
JOSEPH H. HUNT
Assistant Attorney General
DONALD E. KEENER
JOHN W. BLAKELEY
BRYAN S. BEIER
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the term "crime involving moral turpitude" in 8 U.S.C. 1227(a)(2)(A)(i)(I) is unconstitutionally vague as applied to a conviction for communicating with a minor for immoral purposes in violation of Washington state law, which criminalizes communications with children for the predatory purpose of promoting their exposure to and involvement in sexual misconduct.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Statutes:

Miscellaneous:

In the Supreme Court of the United States

No. 19-627

ANTONIO ISLAS-VELOZ, PETITIONER

v.

WILLIAM P. BARR, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1a-27a) is reported at 914 F.3d 1249. The decision of the Board of Immigration Appeals (Pet. App. 28a-34a) is unreported. The decision of the immigration judge (Pet. App. 35a-43a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 4, 2019. A petition for rehearing was denied on August 16, 2019 (Pet. App. 44a). The petition was filed on November 14, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner is a citizen of Mexico and a permanent resident of the United States. Pet. App. 29a. In 2011, petitioner was charged with third-degree child rape under Washington state law. Administrative Record (A.R.)

189. To resolve that charge, he pleaded guilty to one count of communicating with a minor for immoral purposes. A.R. 106-129. An immigration judge subsequently determined that he was removable under 8 U.S.C. 1227(a)(2)(A)(i) (2006), a provision of the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, that makes an alien removable if he is "convicted of a crime involving moral turpitude committed within five years" of his date of admission. 8 U.S.C. 1227(a)(2)(A)(i); see Pet. App. 35a-43a. The Board of Immigration Appeals (Board) affirmed. Pet. App. 28a-34a. The Ninth Circuit denied a petition for judicial review, holding that precedent foreclosed petitioner's claims that his crime is not a "crime involving moral turpitude" and that the term "crime involving moral turpitude" is unconstitutionally vague. *Id.* at 4a-5a.

1. Under the INA, an alien who "is convicted of a crime involving moral turpitude committed within five years" of his date of admission is removable if the crime is one for which "a sentence of one year or longer may be imposed." 8 U.S.C. 1227(a)(2)(A)(i).

a. Petitioner is a citizen of Mexico who was admitted to the United States as a permanent resident in 2008. Pet. App. 29a. Three years later, petitioner was charged with third-degree child rape in violation of Washington state law. A.R. 189. According to the prosecutor's declaration for determination of probable cause, police detained petitioner outside of a public park based on evidence suggesting that petitioner, then 27 years old, had taken a 14-year-old girl to the park and engaged with her in sexual intercourse. A.R. 187. Police later obtained DNA evidence corroborating that allegation. A.R. 188.

To resolve the charge of third-degree child rape, petitioner agreed to plead guilty to felony communication with a minor for immoral purposes, in violation of Wash. Rev. Code § 9.68A.090 (2010). A.R. 106-129; Pet. App. 4a. That crime "prohibits communication with children for the predatory purpose of promoting their exposure to and involvement in sexual misconduct." *State* v. *McNallie*, 846 P.2d 1358, 1364 (Wash. 1993) (en banc).[1]

Petitioner was sentenced to 57 days in jail and 12 months' community custody. A.R. 193-194, 209-211; see also *In re Smith*, 161 P.3d 483, 485 n.1 (Wash. Ct. App. 2007) (defining "[c]ommunity custody" as "confinement" that is "served in the community while the offender is monitored by" the Department of Corrections). He was also fined, prohibited from having any contact with the minor for five years, and required

---

[1] At the time of petitioner's offense, the Washington state statute provided that communication with a minor for immoral purposes is "a gross misdemeanor" unless (i) the actor has a prior conviction for violating that statute or another crime that is a "felony sexual offense" as defined under Washington law, or (ii) the communication is through the sending of an electronic communication. Wash. Rev. Code § 9.68A.090 (2010). Petitioner pleaded guilty to a charge that he committed the offense after a previous conviction for communication with a minor for immoral purposes. A.R. 105, 121. While petitioner did not have such a prior conviction, Washington state law allows a prisoner to plead guilty to an offense he has not committed in order to resolve an original charge for which there is a factual basis, so long as the guilty plea is "based on an informed review of all the alternatives before the accused." *In re Barr*, 684 P.2d 712, 715 (Wash. 1984) (en banc). Petitioner's plea agreement therefore states that he pled guilty "to a crime that I in fact did not commit" to "take advantage of" a plea deal offered by the prosecutor to resolve the "original charge" (third-degree child rape). A.R. 128-129; see A.R. 189. The plea agreement also acknowledges that there "is a factual basis for the original charge." A.R. 128.

to register as a sex offender. *In re Smith*, 161 P.3d at 193-195, 204-205, 216-217.

b. In 2012, an immigration judge found that petitioner was removable because his conviction qualified as a "crime involving moral turpitude" for which a "sentence of one year or longer may be imposed." 8 U.S.C. 1227(a)(2)(A)(i); Pet. App. 36a-41a, 43(a). The Board of Immigration Appeals upheld that determination and dismissed petitioner's administrative appeal. Pet. App. 28a-34a.

2. The court of appeals denied a petition for review. Pet. App. 1a-27a. The court held that petitioner's assertion that his offense did not qualify as a "crime involving moral turpitude" was foreclosed by its decision in *Morales* v. *Gonzalez*, 478 F.3d 972 (9th Cir. 2007), abrogated on other grounds by *Anaya-Ortiz* v. *Holder*, 594 F.3d 673, 677-678 (9th Cir. 2010). Pet. App. 5a. The court explained that, under *Morales*, the Washington state offense of communication with a minor for immoral purposes qualifies as a crime involving moral turpitude because "the full range of conduct prohibited by [the state law] categorically constitutes a crime involving moral turpitude." *Ibid.* (quoting *Morales*, 478 F.3d at 978).

The court of appeals also determined that petitioner's contention that the term "crime involving moral turpitude" is unconstitutionally vague is foreclosed by *Jordan* v. *De George*, 341 U.S. 223 (1951), and related circuit precedent. *Id.* at 4a-5a (citing, *inter alia*, *Martinez-de Ryan* v. *Sessions*, 895 F.3d 1191 (9th Cir.), amended and superseded, 909 F.3d 247 (9th Cir. 2018), cert. denied, 140 S. Ct. 134 (2019)).

ARGUMENT

Petitioner renews his contention (Pet. 2-4, 10-21) that the term "crime involving moral turpitude," 8 U.S.C. 1227(a)(2)(A)(i)(I), is unconstitutionally vague. That contention is foreclosed by this Court's decision in *Jordan* v. *De George*, 341 U.S. 223 (1951), in which the Court rejected a vagueness challenge to the application of the term "crime involving moral turpitude." Petitioner does not dispute that *Jordan* controls. Instead, he urges this Court to grant review in order to overrule or limit that almost 70-year-old precedent. There is no reason to do so. Petitioner cannot point to any disagreement as to whether his particular offense qualifies as a "crime involving moral turpitude," nor can he point to any court of appeals that has held that the term "crime involving moral turpitude" is unconstitutionally vague. To the contrary, the courts of appeals that have considered that assertion have uniformly rejected it, and this Court has recently denied three petitions for certiorari presenting this issue, see *Olivas Motta* v. *Barr*, No. 19-282 (Feb. 24, 2020); *Mercado Ramirez* v. *Barr*, No. 19-284 (Feb. 24, 2020); *Martinez-de Ryan* v. *Barr*, 140 S. Ct. 134 (2019) (No. 18-1085). The same result is warranted here.

1. a. As petitioner acknowledges (Pet. 7), this Court already has rejected a constitutional vagueness challenge to the term "crime involving moral turpitude." In *Jordan*, *supra*, the Court held that an alien's prior convictions for conspiracy to defraud the United States of taxes on distilled spirits constituted "crime[s] involving moral turpitude" that rendered him deportable under Section 19 of the Immigration Act of 1917, ch. 29, 39 Stat. 889. The Court explained that "[t]he term 'moral turpitude' has deep roots in the law" and "has been used as a

test in a variety of situations." *Jordan*, 341 U.S. at 227. The Court further observed that, "[w]ithout exception, federal and state courts have held that a crime in which fraud is an ingredient involves moral turpitude." *Ibid.* In light of that precedent, the Court concluded that the alien's prior convictions for conspiring to defraud the United States qualified as "crime involving moral turpitude." *Id.* at 229.

The Court then addressed the "suggest[ion] that the phrase 'crime involving moral turpitude' lacks sufficiently definite standards" and "is therefore unconstitutional for vagueness." *Jordan*, 341 U.S. at 229. Although the parties had not raised the issue, *ibid.*, the Court and the dissent considered it at length, see *id.* at 229-232; *id.* at 232-245 (Jackson, J., dissenting).

The Court held that the term "crime involving moral turpitude" is not unconstitutionally vague. *Jordan*, 341 U.S. at 229-232. The Court found it "significant" that as of 1951, "the phrase ha[d] been part of the immigration laws for more than sixty years," and "[n]o case ha[d] been decided holding that the phrase is vague." *Id.* at 229-230. The Court acknowledged that there might exist some "difficulty in determining whether certain marginal offenses are within the meaning" of the phrase. *Id.* at 231. But the Court explained that any such difficulty "does not automatically render a statute unconstitutional for indefiniteness," because "[i]mpossible standards of specificity are not required," and "[t]he phrase 'crime involving moral turpitude' presents no greater uncertainty or difficulty than language found in many other statutes repeatedly sanctioned by the Court." *Id.* at 231 & n.15. "Whatever else the phrase 'crime involving moral turpitude' may mean in peripheral cases," the Court held that it was clear that

petitioner's fraud offense was covered and that he was sufficiently "forewarned" of the consequences of his crimes. *Id.* at 232.

b. The same result obtains here. As *Jordan*'s analysis demonstrates, this Court will typically "consider whether a statute is vague as applied to the particular facts at issue, for '[a] plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others,'" *Holder* v. *Humanitarian Law Project*, 561 U.S. 1, 18-19 (2010) (quoting *Village of Hoffman Estates* v. *The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982)) (brackets in original). Thus, the Court in *Jordan* considered whether the term "crime involving moral turpitude" was unconstitutionally vague in the context of the fraud offenses of which the alien in that case had been convicted. 341 U.S. at 229-232; cf. *id.* at 226-227 ("[O]ur inquiry in this case is narrowed to determining whether this particular offense involves moral turpitude. Whether or not certain other offenses involve moral turpitude is irrelevant and beside the point.").

That mode of analysis establishes that petitioner's vagueness challenge must fail. Petitioner was convicted of the offense of "[c]ommunication with a minor *for immoral purposes*." Wash. Rev. Code § 9.68A.090 (2010) (emphasis altered). Given that the crime is explicitly defined as involving "immoral[ity]," *ibid.*, petitioner cannot credibly argue that there is ambiguity as to whether his offense qualifies as a "crime involving moral turpitude."

Further, as was true of the fraud offenses in *Jordan*, there is a long-standing administrative and judicial consensus that an offense like petitioner's—which involves

promoting a child's exposure to or involvement in sexual misconduct—constitutes a "crime involving moral turpitude." Even before the enactment of the INA in 1952, the Board of Immigration Appeals consistently held that the offense of contributing to the delinquency of a child is a crime involving moral turpitude when the underlying act involves inducing (or attempting to induce) a minor to engage in sexual conduct. See, *e.g.*, *In re P-*, 3 I. & N. Dec. 290, 296 (B.I.A. 1949) (citing prior Board decision); *In re F-*, 2 I. & N. Dec. 610, 612 (B.I.A. 1946); *In re P-*, 2 I. & N. Dec. 117, 121 (B.I.A. 1944); cf. *In re Y-*, 1 I. & N. Dec. 662, 663 (B.I.A. 1943) (conviction for contributing to delinquency of a minor was not crime involving moral turpitude where the defendant was accused only of "taking and keeping a delinquent child, of the age of 16 years, in a hotel room for several hours" with no accusation as to what activity transpired there). And since the INA was enacted, the Board has continued to hold that offenses involving contributing to the delinquency of a minor through lewd and lascivious conduct qualify as "crime[s] involving moral turpitude." See, *e.g.*, *In re Garcia*, 11 I. & N. Dec. 521, 525 (B.I.A. 1966); *In re C-*, 5 I. & N. Dec. 65, 66, 68-69 (B.I.A. 1953). For example, a recent Attorney General opinion explains that intentional sexual contact by an adult with a child is "inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general," *In re Silva-Trevino*, 24 I. & N. Dec. 687, 705 (A.G. 2008)(citation omitted), vacated, 26 I. & N. Dec. 550 (A.G. 2015), and reaffirmed in relevant part, 26 I. & N. Dec. 826, 834 (B.I.A 2016).

The courts of appeals have been similarly consistent in holding that crimes involving sexual interactions with

children constitute "crime[s] involving moral turpitude." As the court of appeals explained in the decision below, the Ninth Circuit held more than a decade ago that petitioner's specific offense—felony communication with a minor for immoral purposes—qualifies as a "crime involving moral turpitude." *Morales* v. *Gonzales*, 478 F.3d 972, 978 (9th Cir. 2007), abrogated on other grounds by *Anaya-Ortiz* v. *Holder*, 594 F.3d 673, 677-678 (9th Cir. 2010). And other circuits have consistently held that sexual crimes against minors are crimes involving moral turpitude. See, *e.g.*, *Mehboob* v. *Attorney Gen. of the U.S.*, 549 F.3d 272 (3d Cir. 2008) (sexual contact with a person under 16 years of age by a perpetrator who is at least 4 years older than the complainant is a crime involving moral turpitude); *Sheikh* v. *Gonzales*, 427 F.3d 1077, 1082 (8th Cir. 2005) (encouraging or contributing to deprivation or delinquency of a minor involving sexual intercourse is crime involving moral turpitude); *Castle* v. *INS*, 541 F.2d 1064 (4th Cir. 1976) (per curiam) (carnal knowledge of 15-year-old girl is crime involving moral turpitude); *Marinelli* v. *Ryan*, 285 F.2d 474, 475 (2d Cir. 1961) (act of touching a boy under the age of 16 with an indecent intent is crime involving moral turpitude). As the Ninth Circuit correctly explained in *Morales*, "[s]exual communication with a minor is inherently wrong and contrary to the accepted rules of morality and the duties owed between persons." 478 F.3d 978.

In any event, even if petitioner could raise a vagueness challenge reaching beyond his own crime of conviction, there would be no merit to his contention that the term "crime involving moral turpitude" is unconstitutionally vague. In the now more than 125 years that the term has "been part of the immigration laws," *Jordan*,

341 U.S. at 229, the Board has issued numerous decisions, as have courts on judicial review, that provide substantial guidance as to what crimes do and do not qualify as "crime[s] involving moral turpitude." 8 U.S.C. 1182(a)(2)(A)(i)(I); see, *e.g.*, Ira J. Kurzban, *Kurzban's Immigration Law Sourcebook* 113-127 (16th ed. 2018-2019) (classifying many crimes based on Board and judicial interpretations). And the Board has recently and succinctly encapsulated the crimes that qualify, defining "crime[s] involving moral turpitude" to include those that involve conduct that "is 'inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general,'" and that involve "both a culpable mental state and reprehensible conduct." *In re Mendez*, 27 I. & N. Dec. 219, 221 (B.I.A. 2018) (citation omitted).

c. Petitioner nonetheless asserts (Pet. 11-21) that this Court should overrule or limit *Jordan* because it is inconsistent with the Court's more recent vagueness precedents. That is incorrect. In the cases on which petitioner relies, *Sessions* v. *Dimaya*, 138 S. Ct. 1204 (2018), and *Johnson* v. *United States*, 135 S. Ct. 2551 (2015), this Court invalidated entirely distinct statutory provisions on facial vagueness grounds. Those decisions do not cast doubt on *Jordan*'s longstanding holding.

As this Court explained in *United States* v. *Davis*, 139 S. Ct. 2319 (2019), the relevant statute in each of the Court's recent vagueness precedents required courts to determine whether a crime qualified as a "violent felony" or "crime of violence" by "estimat[ing] the degree of risk posed by a crime's imagined 'ordinary case.'" *Id.* at 2326. That "ordinary case" analysis introduced "grave uncertainty" into the statutes because different judges

might "imagine" an "idealized ordinary case" of a crime very differently, *Johnson*, 135 S. Ct. at 2557-2558, and there was no way for any judge to "really know" if his or her version was correct, *Dimaya*, 138 S. Ct. at 1214. It was this uncertainty that made the statutes unconstitutionally vague. *Ibid.* Indeed, in *Johnson* and *Dimaya*, the Court emphasized that the mere use of "'qualitative standard[s]'" or "imprecise terms" like "violent felony" is not enough, by itself, to render a statute void for vagueness. *Ibid.* (quoting *Johnson*, 135 S. Ct. at 2561).

Unlike the statutes in *Dimaya* and *Johnson*, the statutory provision here does not call for the Board or a reviewing court to decide whether a particular offense constitutes a "crime of moral turpitude" by imagining some hypothetical "ordinary case" of the crime. To the contrary, it simply calls for the Board to determine whether "[t]he full range of conduct" prohibited by a state offense "constitutes a crime involving moral turpitude." Pet. App. 5a (quoting *Morales*, 478 F.3d at 978). The statutory provision here therefore does not contain the feature that rendered the statutes in *Davis*, *Dimaya*, and *Johnson* unconstitutional.

Petitioner disputes that conclusion, contending that the Board must engage in an analysis similar to the "ordinary case" inquiry because it must determine whether even "'the least of the acts'" criminalized by an offense constitutes a "crime involving moral turpitude." Pet. 13 (quoting *Menendez* v. *Whitaker*, 908 F.3d 467, 472 (9th Cir. 2018)). But stating that the Board must determine whether the "least of the acts" constitutes a crime involving moral turpitude, *ibid.*, is just another way of saying that the Board should look to the "full range" of conduct proscribed by an offense in order to ensure that

all of that conduct involves moral turpitude, Pet. App. 5a (quoting *Morales*, 478 F.3d at 978). Adhering to that command does not require the Board to engage in any indeterminate task equivalent to imagining the "ordinary case" of a particular offense.

Moreover, as the court of appeals observed, Pet. App. 5a, *Dimaya* expressly relied on *Jordan* to reject the argument that "a less searching form of void-for-vagueness doctrine" applies in "removal cases" than in criminal ones. *Dimaya*, 138 S. Ct. at 1212-1213; Pet. App. 4a. The Court's opinion in *Dimaya* explained that *Jordan* "chose to test (and ultimately uphold)" the moral-turpitude provision "'under the established criteria of the "void for vagueness" doctrine' applicable to criminal laws." 138 S. Ct. at 1213 (citation omitted). In citing *Jordan* with approval, the Court did not suggest that its subsequent void-for-vagueness decisions, including *Dimaya* itself, actually require overruling *Jordan*'s holding. See *ibid.*

Nor is there any merit to petitioner's alternative suggestion (Pet. 24-26) that the Court should "limit" *Jordan* by holding that the term "crime involving moral turpitude" applies exclusively to the fraud offenses at issue in *Jordan*. Petitioner offers no coherent reason why the term should be understood to apply to fraud, but not to his offense, which is explicitly defined to include only conduct undertaken for "immoral purposes." Wash. Rev. Code § 9.68A.090 (2010).

2. Review is also unwarranted because, following *Jordan*, the courts of appeals that have addressed the question have all held that the term "crime involving moral turpitude" is not unconstitutionally vague. See, *e.g.*, *Wyngaard* v. *Kennedy*, 295 F.2d 184, 185 (D.C. Cir.) (per curiam), cert. denied, 368 U.S. 926 (1961); *Hudson*

v. *Esperdy*, 290 F.2d 879, 880 (2d Cir.) (per curiam), cert. denied, 368 U.S. 918 (1961); *Tseung Chu* v. *Cornell*, 247 F.2d 929, 938-939 (9th Cir.), cert. denied, 355 U.S. 892 (1957); *United States ex rel. Circella* v. *Sahli*, 216 F.2d 33, 40 (7th Cir. 1954), cert. denied, 348 U.S. 964 (1955). And every court of appeals to have considered the issue following *Johnson* or *Dimaya* has reaffirmed that the term is not unconstitutionally vague. See *Moreno* v. *Attorney Gen. of the U.S.*, 887 F.3d 160, 165-166 (3d Cir. 2018); *Boggala* v. *Sessions*, 866 F.3d 563, 569-570 (4th Cir. 2017), cert. denied, 138 S. Ct. 1296 (2018); *Dominguez-Pulido* v. *Lynch*, 821 F.3d 837, 842-843 (7th Cir. 2016); *Martinez-de Ryan* v. *Sessions*, 895 F.3d 1191 (9th Cir.), amended and superseded, 909 F.3d 247 (9th Cir. 2018), cert. denied, 140 S. Ct. 134 (2019).

Petitioner briefly suggests (Pet. 19-20) that the courts have, at times, reached different determinations regarding whether a particular federal or state offense qualifies as a "crime involving moral turpitude." Petitioner does not and cannot allege that there is any such disagreement with respect to the felony for which he was convicted. See pp. 7-9, *supra*. And, in any event, the purported divergent results on which petitioner relies generally reflect application of a single standard to different state offenses.

For example, petitioner observes (Pet. 19) that "[a]ccessory after the fact" is a crime involving moral turpitude in the Seventh Circuit, but not in the Ninth Circuit. But the Seventh Circuit considered a statute that had an element consisting of knowingly providing false information to police officers, whereas the statute considered by the Ninth Circuit encompassed "'*[a]ny* kind of overt or affirmative assistance to a known felon,'" including "providing food or shelter to someone

who has committed a felony—even where that person is a family member." *Navarro-Lopez* v. *Gonzales*, 503 F.3d 1063, 1071 (9th Cir. 2007) (en banc) (citation omitted), overruled on other grounds by *United States* v. *Aguila-Montes de Oca*, 655 F.3d 915 (9th Cir. 2011) (en banc), abrogated by *Descamps* v. *United States*, 570 U.S. 254 (2013); compare *Padilla* v. *Gonzales*, 397 F.3d 1016, 1020 (7th Cir. 2005) (per curiam), overruled on other grounds by *Ali* v. *Mukasey*, 521 F.3d 737 (7th Cir. 2008), cert. denied, 557 U.S. 918 (2009).[2]

Petitioner's other example (Pet. 19)—misusing a social security number—is even less relevant because the division among the courts of appeals is not based on the construction of the term "crime involving moral turpitude." Rather, the difference between *Beltran-Tirado* v. *INS*, 213 F.3d 1179 (9th Cir. 2000), and *Hyder* v. *Keisler*, 506 F.3d 388 (5th Cir. 2007), is attributable to the Ninth Circuit's unique interpretation of 42 U.S.C. 408, the federal statute that punishes the misuse of a social security number. In the Ninth Circuit's view, the legislative history of Section 408 shows that Congress did not intend for the crime to qualify as one involving "moral turpitude." *Beltran-Tirado*, 213 F.3d at 1185. The Fifth Circuit (and other circuits to consider the issue) have declined to adopt that understanding of the criminal statute. *Hyder*, 506 F.3d 392; accord *Serrato-Soto* v. *Holder*, 570 F.3d 686, 692 (6th Cir. 2009); *Marin-Rodriguez* v. *Holder*, 710 F.3d 734, 740 (7th Cir. 2013); *Guardado-Garcia* v. *Holder*, 615 F.3d 900, 903 (8th Cir.

---

[2] Petitioner incorrectly cites (Pet. 19) *Itani* v. *Ashcroft*, 298 F.3d 1213 (11th Cir. 2002) (per curiam), for the proposition that conviction as an accessory after the fact is a crime involving moral turpitude. That case concerned the distinct crime of misprision of a felony. See *id.* at 1215-1217.

2010), cert. denied, 563 U.S. 987 (2011). That dispute with respect to the meaning of Section 408 obviously is not presented in this case.

Petitioner therefore has not pointed to any conflict in the circuits, even on the application of the term "crime involving moral turpitude," that would warrant this Court's review—much less warrant review of his sweeping contention that the term, which has been embedded in immigration law for more than a century, is unconstitutionally vague on its face.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
JOSEPH H. HUNT
Assistant Attorney General
DONALD E. KEENER
JOHN W. BLAKELEY
BRYAN S. BEIER
Attorneys

MARCH 2020