No. 19-1325

# In the Supreme Court of the United States

DIMITRIOS I. BOURTZAKIS, PETITIONER

*v.*

WILLIAM P. BARR, ATTORNEY GENERAL, ET AL.

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

**BRIEF FOR THE RESPONDENT IN OPPOSITION**

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## QUESTION PRESENTED

Whether accomplice liability under Washington Revised Code § 9A.08.020(3)(a) (1989) is properly interpreted to require less than active participation in a criminal venture with full knowledge of the circumstances constituting the charged offense.

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 940 F.3d 616. The order of the district court (Pet. App. 26a-42a) is not published in the Federal Supplement but is available at 2018 WL 7252936. The decision of the United States Citizenship and Immigration Services (Pet. App. 46a-50a) is unreported.

### JURISDICTION

The judgment of the court of appeals was entered on October 9, 2019. A petition for rehearing was denied on December 30, 2019. Pet. App. 54a-55a. By order of March 19, 2020, this Court extended the deadline for all petitions for writs of certiorari due on or after the date of the Court's order to 150 days from the date of the lower court judgment or order denying a timely petition for rehearing. This petition for a writ of certiorari was

filed on May 26, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**STATEMENT**

1. a. Under the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, an alien seeking naturalization must satisfy various requirements, including demonstrating that he has been a person of "good moral character" for the five years preceding the date of the application. 8 U.S.C. 1427(a)(1) and (3). In determining whether the alien has met his burden of establishing good moral character, the Secretary of Homeland Security "may take into consideration" acts that occurred "at any time" prior to the filing of the application. 8 U.S.C. 1427(e). The statute further provides that good moral character cannot be established if the alien "at any time has been convicted of an aggravated felony (as defined in [1101](a)(43))." 8 U.S.C. 1101(f)(8).

The term "aggravated felony" includes, as relevant here, "a drug trafficking crime (as defined in section 924(c) of title 18)." 8 U.S.C. 1101(a)(43)(B). Section 924(c), in turn, defines a "drug trafficking crime" to include "any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.)." And the Controlled Substances Act makes it unlawful "to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance." 21 U.S.C. 841(a)(1).

The term "aggravated felony" "applies to an offense described in [Section 1101(a)(43)] whether in violation of Federal or State law." 8 U.S.C. 1101(a)(43). To determine whether a state conviction qualifies, the Court "generally employ[s] a 'categorical approach'" to determine whether "the state statute defining the crime

of conviction categorically fits" within the federal statute defining "a corresponding aggravated felony." *Moncrieffe* v. *Holder*, 569 U.S. 184, 190 (2013) (citation and internal quotation marks omitted); see *Torres* v. *Lynch*, 136 S. Ct. 1619, 1621 (2016). That analysis examines the minimum conduct required for a state conviction, rather than the facts underlying the particular case. In considering the minimum conduct criminalized by the state statute, the Court does not apply "legal imagination" to the state offense; "there must be a realistic probability, not a theoretical possibility, that the State would apply its statute" to conduct that falls outside the federal analogue. *Moncrieffe*, 569 U.S. at 191 (citation and internal quotation marks omitted). Moreover, where a state statute lists different crimes "described separately," the Court examines a limited universe of documents to determine the particular offense of conviction. *Ibid.*

The federal accomplice liability statute, 18 U.S.C. 2, provides that anyone who "aids, abets, counsels, commands, induces or procures" the commission of an offense against the United States is punishable as a principal. In *Rosemond* v. *United States*, 572 U.S. 65 (2014), this Court considered the mens rea required under Section 2. The Court explained that federal accomplice liability requires a person to take an affirmative act to facilitate the commission of an offense "with the intent of facilitating the offense's commission." *Id.* at 71. That "intent requirement [is] satisfied when a person actively participates in a criminal venture with full knowledge of the circumstances constituting the charged offense." *Id.* at 77.

b. Under Washington Revised Code § 69.50.401(a) (1989), it is "unlawful for any person to manufacture,

deliver, or possess with intent to manufacture or deliver, a controlled substance." That language closely tracks the relevant language of the Controlled Substances Act. See 21 U.S.C. 841(a)(1).

Washington has a separate statute governing accomplice liability. That statute provides that "[a] person is an accomplice of another person in the commission of a crime if" the person aids the commission of the crime "[w]ith knowledge that it will promote or facilitate the commission of the crime." Wash. Rev. Code § 9A.08.020(3)(a) (1989). It separately provides that an accomplice to a crime is guilty of the crime itself. *Id.* § 9A.08.020(1) and (2)(c).

2. a. Petitioner is a native citizen of Greece who attained permanent resident status in the United States in 1974. Pet. App. 26a. In 1991, petitioner was convicted of delivery of cocaine in violation of Washington Revised Code § 69.50.401(a) (1989). Pet. App. 48a. He was convicted as a principal, rather than as an accomplice. See *id.* at 21a n.1 (Robreno, J., concurring in part and concurring in the judgment). Between 1997 and 2007, petitioner was arrested for grand theft and twice arrested for possession of cocaine. *Id.* at 48a-49a. As a result, petitioner spent over a year incarcerated. *Id.* at 49a.

In 2016, petitioner filed an application for citizenship with the United States Citizenship and Immigration Services (USCIS). Pet. App. 26a-27a. USCIS denied the application, explaining that petitioner had failed to establish that he was "a person of good moral character" in light of his conviction and arrests, and due to his failure to establish "any extenuating circumstances" for that criminal history during his interview. *Id.* at 49a.

Petitioner requested a hearing on the denial of his application. *Id.* at 43a-44a. After a hearing, USCIS reaffirmed its prior decision. *Id.* at 44a. USCIS explained that petitioner's conviction for delivery of cocaine under Washington law constituted an aggravated felony, and that an aggravated felony conviction permanently barred petitioner from establishing the good moral character requisite for naturalization. *Ibid.* Petitioner sought review in the United States District Court for the Middle District of Florida. *Id.* at 26a.

b. The district court granted the government's motion to dismiss. Pet. App. 26a-42a.

In district court, petitioner argued that the language in Washington Revised Code § 69.50.401(a) (1989), which sets out his substantive drug distribution offense, was broader than the corresponding provision of the Controlled Substances Act. Pet. App. 35a-37a, 39a-41a. The court rejected that argument, concluding that the terms in the Washington statute "mean[] exactly the same thing" as the terms in the Controlled Substances Act. *Id.* at 36a.

c. The court of appeals affirmed. Pet. App. 1a-22a.

Agreeing with the district court's reasoning, the court of appeals held that the substantive drug offense set out in Washington Revised Code § 69.50.401(a)(1)(i) (1989) is "no broader than the [offense set out in] the federal Act" because the Washington statute's prohibition on delivering a controlled substance captures only the conduct covered by the Controlled Substances Act's prohibition on dispensing a controlled substance. Pet. App. 17a-19a.

The court of appeals also considered petitioner's argument, raised for the first time on appeal, Pet. App. 7a, that the Washington drug statute could not constitute

an aggravated felony because accomplice liability in Washington is broader than federal accomplice liability. The court first held that, as a matter of state law, a person can be held liable under the Washington drug statute "as either an accomplice or a principal." *Id.* at 9a.

The court of appeals nonetheless rejected petitioner's argument because it determined that there was no "realistic probability" that accomplice liability under Washington's complicity statute "extend[ed] significantly beyond" federal accomplice liability. Pet. App. 9a-10a (quoting *Gonzales* v. *Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). The court recognized that Washington's accomplice liability statute refers to "knowledge" that the defendant's aid "will promote or facilitate the commission of the crime," Wash. Rev. Code § 9A.08.020(3)(A) (1989), while this Court "has described the federal mens-rea requirement for accomplice liability as requiring that an accomplice *intend* to facilitate the crime's commission." Pet. App. 11a (citing *Rosemond*, 572 U.S. at 76). But the court of appeals emphasized that this Court has held that the intent requirement is satisfied "by proof that the accomplice actively participated in the crime and knew the nature of the crime he was facilitating." *Id.* at 12a (citing *Rosemond*, 572 U.S. at 76-77).

The court of appeals conducted an extensive analysis of Washington case law, explaining that, as interpreted by Washington courts, "the mens-rea requirements for accomplice liability under the Washington statute and the federal Act do not diverge," but rather "mirror one another." Pet. App. 11a, 13a. In particular, the court cited a Washington Supreme Court decision that considered a question "similar to the one [this Court considered] in *Rosemond*," and reached the same answer,

explaining that "to be an accomplice, an individual must have acted with knowledge that he or she was promoting or facilitating *the* crime for which that individual was eventually charged." *Id.* at 13a (quoting *State* v. *Cronin*, 14 P.3d 752, 757-758 (Wash. 2000)) (brackets and ellipsis omitted). The court further emphasized that petitioner "ha[d] not identified any Washington caselaw that establishes a 'realistic probability' that accomplice liability under the Washington drug statute 'extends significantly beyond' accomplice liability under the federal Act." *Id.* at 13a-14a (quoting *Duenas-Alvarez*, 549 U.S. at 193) (brackets omitted).

The court of appeals acknowledged that the Ninth Circuit had adopted a contrary interpretation of Washington law in *United States* v. *Valdivia-Flores*, 876 F.3d 1201 (2017). Pet. App. 10a. But it concluded that the Ninth Circuit misinterpreted decisions of the Washington Supreme Court, relying on decisions that "hold only that an accomplice need not share the *principal's* state of mind" for a specific-intent crime. *Id.* at 16a. It also pointed out that the Ninth Circuit did not "address *Rosemond* and related precedents," or acknowledge that intent under federal accomplice liability was met through knowing action to facilitate the crime. *Id.* at 15a-16a. The court of appeals explained that under both Washington law and federal law as explicated in *Rosemond*, "a person is liable as an accomplice if he actively participates in a crime and knows the nature of the crime he is facilitating." *Id.* at 13a. Accordingly, the court concluded that petitioner's crime was categorically an aggravated felony. *Id.* at 19a.

Judge Robreno concurred in part and concurred in the judgment. Pet. App. 19a-22a. He agreed with the majority that the elements of Washington Revised Code

§ 69.50.401(a) (1989) "are no broader than those of * * * 21 U.S.C. § 841(a)(1)." Pet. App. 19a. In his view, that should have "end[ed] the inquiry," because there was no reason to go beyond "the statute of conviction" to "the accomplice liability statute." *Id.* at 19a-20a. Judge Robreno explained that the categorical approach requires a court to compare "only the elements of the state *statute of conviction*" with its federal counterpart. *Id.* at 20a. And he emphasized that comparing accomplice liability "opens up the possibility that any Washington criminal statute (and perhaps that of any other state) could be found broader than the corresponding federal criminal statute" based "on an entirely separate comparison of the state and federal accomplice liability statutes." *Id.* at 22a.

**ARGUMENT**

The court of appeals correctly sustained the denial of petitioner's naturalization application. The court was correct that, as conclusively interpreted by state courts, Washington accomplice liability mirrors the federal standard. While the Ninth Circuit adopted a different interpretation of Washington accomplice liability, that narrow disagreement on a question of state law does not warrant this Court's review.

1. a. The Eleventh Circuit correctly interpreted Washington accomplice liability law, which has substantially the same scope as federal accomplice liability.

For a state offense to be overbroad relative to a federal analogue, "there must be a realistic probability, not a theoretical possibility, that the State would apply its statute" to conduct that falls outside the federal offense. *Moncrieffe* v. *Holder*, 569 U.S. 184, 191 (2013) (citation and internal quotation marks omitted). The federal ac-

complice liability statute, 18 U.S.C. 2, provides that anyone who "aids, abets, counsels, commands, induces or procures" the commission of an offense against the United States is punishable as a principal. In *Rosemond* v. *United States*, 572 U.S. 65 (2014), this Court considered the mens rea required under Section 2. The Court explained that federal accomplice liability requires a person to take an affirmative act to facilitate the commission of an offense "with the intent of facilitating the offense's commission." *Id.* at 71. Significantly, however, the "intent requirement [is] satisfied when a person actively participates in a criminal venture with full knowledge of the circumstances constituting the charged offense." *Id.* at 77. In reaching that conclusion, the Court pointed to a past case in which it "found the requisite intent for aiding and abetting" mail fraud where a defendant "took part in a fraud 'knowing' that his confederate would take care of the mailing," *ibid.* (quoting *Pereira* v. *United States*, 347 U.S. 1, 12 (1954)) (brackets omitted), and another case in which it "upheld a conviction for aiding and abetting the evasion of liquor taxes because the defendant helped operate a clandestine distillery 'knowing' the business was set up 'to violate Government revenue laws,'" *ibid.* (quoting *Bozza* v. *United States*, 330 U.S. 160, 165 (1947)) (brackets omitted).

The Washington accomplice liability statute covers anyone who "aids," "agrees to aid," "solicits, commands, encourages, or requests" another person to commit a crime "[w]ith knowledge that it will promote or facilitate the commission of the crime." Wash. Rev. Code § 9A.08.020(3)(a) (1989). The Washington Supreme Court has held, however, that a defendant is an accomplice only if he facilitates the commission of the crime

with "the intent" to do so; for that reason, "presence alone plus knowledge of ongoing activity" is not sufficient. *In re Welfare of Wilson*, 588 P.2d 1161, 1164 (1979). In particular, the Washington Supreme Court has held that, in order to satisfy the mens rea requirement, the perpetrator must "act[] with knowledge that his or her conduct will promote *the specific crime* charged." *Washington* v. *Farnsworth*, 374 P.3d 1152, 1159 (2016) (emphasis added). And it has explained that the Washington "legislature intended the culpability of an accomplice not [to] extend beyond the crimes of which the accomplice actually has knowledge." *State* v. *Cronin*, 14 P.3d 752, 758 (Wash. 2000) (brackets, citation, and internal quotation marks omitted). Those holdings mirror the federal requirement that an accomplice actively participate in a criminal venture with full knowledge of the circumstances constituting the charged offense. See *Rosemond*, 572 U.S. at 77.

To be sure, those requirements do not appear on the face of the Washington accomplice liability statute. But "state court decision[s]" interpreting statutes just like the statutes themselves, are "authoritative sources of state law." *Mathis* v. *United States*, 136 S. Ct. 2243, 2256 (2016); see *Johnson* v. *United States*, 559 U.S. 133, 138 (2010) (noting that the Court is "bound by [a state] Supreme Court's interpretation of state law, including its determination of the elements" of an offense). As conclusively interpreted by the Washington Supreme Court, the state accomplice liability statute does not "extend significantly beyond" the federal definition. See *Gonzales* v. *Duenas-Alvarez*, 549 U.S. 183, 193 (2007).

b. In arguing to the contrary, petitioner suggests that the court of appeals erred in relying on *Rosemond*'s

analysis of the mens rea requirement for federal accomplice liability law because that analysis applies only to "combination" crimes. Pet. 16-17, 28-29. True, the crime at issue in *Rosemond* was 18 U.S.C. 924(c), a combination crime that prohibits using or carrying a firearm during a crime of violence or drug trafficking crime. 572 U.S. at 67. But this Court's analysis of the intent requirement was not so limited. Rather than adopting a more expansive mens rea standard for combination crimes, the Court held that "*for purposes of aiding and abetting law*, a person who actively participates in a criminal scheme knowing its extent and character intends that scheme's commission." *Id.* at 77 (emphasis added). The Court emphasized that its "holding [was] grounded in the distinctive intent standard for aiding and abetting someone else's act." *Id.* at 81 n.10. And in explaining that active participation with full knowledge of the circumstances satisfies the intent requirement, the Court relied on precedents so holding for mail fraud and tax evasion, standard, non-combination crimes. *Id.* at 77.

Petitioner next invokes the Model Penal Code, noting that the difference between knowledge and intent-based complicity standards was "at the heart of a debate among the drafters of the Model Penal Code," who ultimately adopted an intent-based mens rea. Pet. 31-32. But the Washington Supreme Court has observed that Washington's accomplice liability statute was derived from the Model Penal Code, and that the legislature was "in full agreement with the content" of the relevant Model Penal Code provision. *State* v. *Roberts*, 14 P.3d 713, 735 & n.13 (2000). That includes the requirement that the accomplice "have the purpose to promote or facilitate the particular conduct that forms the basis

for the charge," and that a defendant "will not be liable for conduct that does not fall within this purpose." *Id.* at 735 (quoting Model Penal Code § 2.06 cmt. 6b (1985)) (emphasis omitted).

Petitioner invokes hypothetical scenarios that he claims would qualify for accomplice liability under Washington law, but not federal law. Pet. 32 (citing Model Penal Code § 2.06 cmt. 6c (1985)). As an initial matter, those examples fall outside the Model Penal Code definition, and thus outside the scope of the Washington accomplice liability provision as interpreted by the Washington Supreme Court. See *Roberts*, 14 P.3d at 735. In any event, hypotheticals are not enough. Petitioner fails to identify, as he is required to do, any "cases in which the state courts in fact did apply the statute in the special (nongeneric) manner for which he argues." *Duenas-Alvarez*, 549 U.S. at 193. For that reason, petitioner has failed to demonstrate that Washington "actually prosecutes the relevant offense" in any situations that would fall below the federal requirement. *Moncrieffe*, 569 U.S. at 205-206.

Petitioner likewise errs in arguing that Washington law is overbroad because a person might be convicted for his "incidental[]" participation in a crime. Pet. 30-31. Under federal law, it remains an open question whether "defendants who incidentally facilitate a criminal venture rather than actively participate in it" satisfy the intent requirement through knowledge of the circumstances of the crime. *Rosemond*, 572 U.S. at 77 n.8. Petitioner speculates that a "hypothetical" case of incidental participation "would satisfy" the Washington complicity standard, but again, petitioner has not cited any actual cases where such a prosecution was sus-

tained. Pet. 31. Indeed, contrary to petitioner's contention that "active participation and knowledge of the overall crime * * * is not necessary" under Washington law, Pet. 33 n.8, Washington courts have repeatedly reversed convictions because knowledge of a crime was not sufficient unless the defendant's active participation established that the defendant intended to aid the crime's commission. See, *e.g.*, *State* v. *Amezola*, 741 P.2d 1024, 1030-1031 (Wash. Ct. App. 1987) (reversing a conviction because the defendant, who had "knowledge of the crime," committed acts that were merely "incidental to the criminal acts charged"), abrogated on other grounds by *State* v. *McDonald*, 981 P.2d 443 (Wash. 1999); *State* v. *Simon*, No. 38502-0-I, 1997 WL 292344, at *2 (Wash. Ct. App. June 2, 1997) (reversing a conviction for animal cruelty where the defendant did not actively participate, but "giggled," because that evidence did not establish the defendant "intended to encourage" the unlawful actions); *Wilson*, 588 P.2d at 1164 (reversing a conviction because presence at the scene plus knowledge of the ongoing criminal activity was insufficient to establish the requisite "intent of the [defendant] to encourage").

Petitioner also asserts that Washington law erases a federal requirement that a defendant not only "associate himself with the venture" but also "seek by his action to make it succeed." Pet. 30 (quoting *Rosemond*, 572 U.S. at 81 n.10). That argument is mistaken. As an initial matter, that language does not set out an additional requirement because the Court was clear in *Rosemond* that active participation "with full knowledge of the circumstances" itself establishes that a defendant sought to make the venture succeed. *Rosemond*, 572 U.S. at 77; see *id.* at 85 (Alito, J., concurring in part and

dissenting in part) (noting that the Court treats as "interchangeabl[e]" the requirement that an accomplice seek to make the action succeed and a simple knowledge test). Regardless, Washington law, once again, has the same requirement; to qualify as an accomplice, a defendant must "associate[] himself with the undertaking, participate[] in it as in something he desires to bring about, and seek[] by his action to make it succeed." *Wilson*, 588 P.2d at 1164 (citation omitted). For accomplice liability to attach under Washington law, "something more than presence alone plus knowledge of ongoing activity must be shown to establish the intent requisite to finding [a defendant] to be an accomplice." *Ibid.*

In sum, none of petitioner's contrary arguments has merit; the court of appeals was correct that the Washington and federal accomplice liability schemes mirror each other. At the very least, given the close relationship between intent and knowledge in the accomplice liability context, there is no "realistic probability" that the Washington scheme "extend[s] significantly beyond the concept" set out in federal law. *Duenas-Alvarez*, 549 U.S. at 193.

c. Additionally, regardless of the proper interpretation of Washington law, the decision below was correct for the reasons set out in the concurring opinion. See Pet. App. 19a-22a. While the court of appeals majority accepted that a comparison of accomplice liability schemes is relevant in this case, there is reason to doubt that this is correct. Reaching the question presented would require the Court to resolve that threshold question, which has not percolated among the courts of appeals.

As an initial matter, this Court has only considered the scope of state-law provisions for accomplice liability

in a case where accomplice liability appeared on the face of the state statute of conviction. *Duenas-Alvarez*, 549 U.S. at 187-188 (addressing a state statute that expressly covered "any person who is a party or an accessory to or an accomplice in [the prohibited conduct]") (citation and emphasis omitted). Since *Duenas-Alvarez*, this Court has applied the categorical approach numerous times to state statutes that do not address accomplice liability on their face, but which do require a comparison to a generic crime or federal analogue. In none of those cases did the Court consider the contours of accomplice liability under the relevant state statute, or suggest that such an analysis may be required. See, *e.g.*, *Torres* v. *Lynch*, 136 S. Ct. 1619, 1623-1634 (2016); *Quarles* v. *United States*, 139 S. Ct. 1872 (2019).

Petitioner is incorrect that comparing a substantive state statute to a federal analogue or generic offense requires a comparison of accomplice liability schemes in each case. The relevant question under the INA is whether the state statute defining the crime of conviction sets out a crime "as defined in" the Controlled Substances Act, an inquiry that turns on the elements of the respective statutes. 8 U.S.C. 1101(f)(8); see *Torres*, 136 S. Ct. at 1630 (observing that the substantive elements of the crime of conviction "describe the evil Congress seeks to prevent"). Accomplice liability is a theory under which a person may be held culpable for all of the elements of an offense, even if he, personally, did not commit each element. See *Rosemond*, 572 U.S. at 72-74. The theory of liability in a particular case does not relieve the prosecution from demonstrating that each element of a crime was committed, and that the defendant is legally culpable for the entire offense. See *ibid.* For these reasons, the analysis of Washington accomplice liability

law is irrelevant to the aggravated felony determination.

2. Review is also not warranted because the disagreement petitioner identified is on the interpretation of state, rather than federal law. This Court's "practice [is] to accept a reasonable construction of state law by the court of appeals." *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U.S. 450, 461 (1995) (citation omitted). Any residual ambiguity about the scope of Washington liability can be conclusively resolved by the Washington Supreme Court.

What is more, in *Valdivia-Flores*, the Ninth Circuit did not address the key Washington Supreme Court decision identified by the Eleventh Circuit, nor did it cite this Court's decision in *Rosemond*, which explained the relationship between knowledge and intent for purposes of federal accomplice liability. See 876 F.3d 1201, 1207-1209 (2017). Those omissions could lead the Ninth Circuit to revisit *Valdivia-Flores*' analysis of Washington law. And the Ninth Circuit has not been consistent in following the teaching of *Valdivia-Flores*. In particular, the Ninth Circuit has held that another Washington statute was a categorical match for the generic offense of sexual abuse of a minor, and thus an aggravated felony under the INA, without addressing accomplice liability or citing *Valdivia-Flores*—despite the fact that the author of *Valdivia-Flores* was on the latter panel. *Quintero-Cisneros* v. *Sessions*, 891 F.3d 1197, 1199-1202 (2018).

Moreover, the disagreement petitioner identifies is a narrow one. It relates to the breadth of accomplice liability in a single state. And although petitioner suggests that the disagreement has significant implications, the Ninth Circuit itself has cabined its analysis,

appropriately declining to apply *Valdivia-Flores* to the force clause of a crime of violence definition. See *United States* v. *Door*, 917 F.3d 1146, 1152, cert. denied, 140 S. Ct. 120 (2019) (rejecting the argument that "because every Washington criminal statute incorporates aiding and abetting, * * * *all* Washington state convictions fail to qualify as crimes of violence"). Because this case presents a narrow disagreement on a question of state law and can be resolved without this Court's intervention, further review is not warranted.

3. Finally, this case is not a suitable vehicle for further review because the ruling petitioner seeks would be unlikely to change the result in his case.

The USCIS initially denied petitioner's naturalization application on the ground that petitioner's significant criminal history, including more than a year spent incarcerated, reflected poorly on his moral character, and that petitioner failed to present any extenuating circumstances to explain that criminal history. Pet. App. 49a. In reaffirming that decision, the agency reasoned that it was statutorily barred from finding good moral character because the Washington drug offense is an aggravated felony, *id.* at 44a, but reversing that determination would do nothing to undermine the agency's initial analysis. Regardless of whether petitioner's conviction constitutes an aggravated felony, his criminal history is a sufficient basis to deny petitioner's naturalization application. 8 U.S.C. 1101(f) and 1427(e); see *In re Castillo-Perez*, 27 I. & N. Dec. 664, 669 (A.G. 2019) (explaining that "[g]ood moral character requires adherence to the generally accepted moral conventions of the community, and criminal activity is probative of non-adherence to those conventions"). For that reason,

petitioner cannot demonstrate that even if he could establish that his conviction was not for an aggravated felony, he would ultimately prevail in his application for naturalization. Given the limited practical significance of the question presented in this case, further review is not warranted.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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