From: (h)(6):

To: OPLA Field Personnel; OPLA HQ Personnel

Subject: Broadcast Message: Implementing Matter of Jimenez-Cedillo, 27 I&N Dec. 782 (BIA 2020)

Date: Monday, April 20, 2020 7:46:49 AM

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

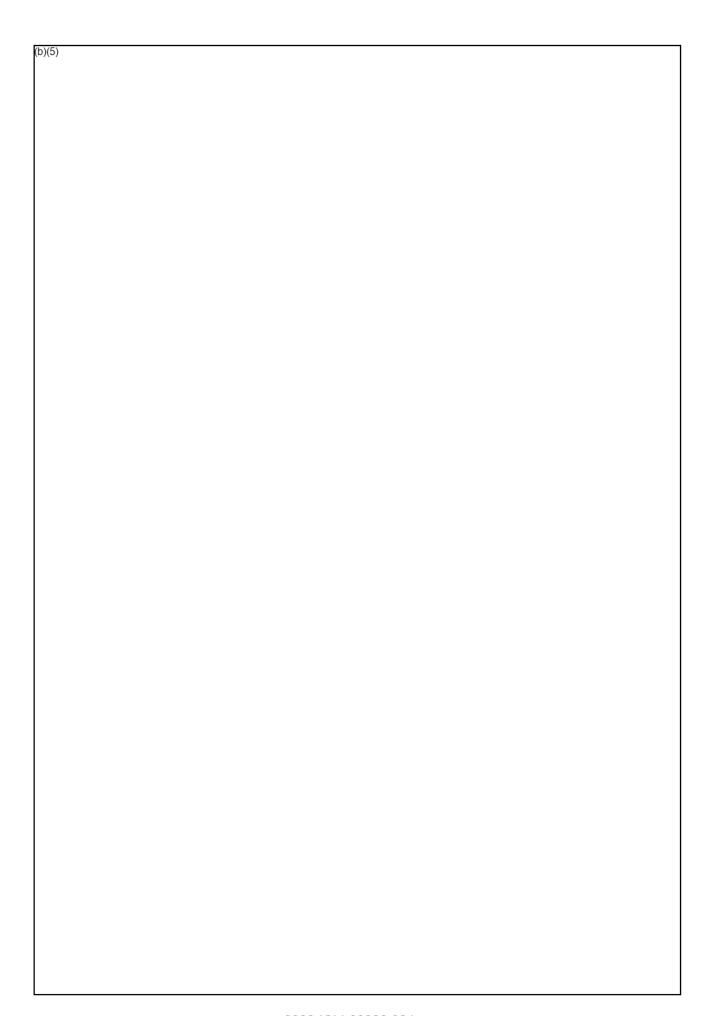
On February 27, 2020, the Board of Immigration Appeals (BIA) issued *Matter of Jimenez-Cedillo*, 27 I&N Dec. 782 (BIA 2020) (*Jimenez-Cedillo II*), reaffirming its prior holding in *Matter of Jimenez-Cedillo*, 27 I&N Dec. 1 (BIA 2017) (*Jimenez-Cedillo I*), that a sexual offense committed against a child under 14, or against a child under 16 where there is a significant age differential between the perpetrator and the victim, constitutes a crime involving moral turpitude (CIMT), even where the statute requires no culpable mental state as to the age of the child.

The BIA previously found the respondent, a Mexican national unlawfully present in the United States, ineligible for cancellation of removal under section 240A(b) of the Immigration and Nationality Act because he had been convicted in 2015 of a CIMT, specifically, online solicitation of a minor in violation of section 3-324(b) of the Maryland Criminal Law (MCL). See Jimenez-Cedillo II, 27 I&N Dec. at 782-84. On petition for review, the U.S. Court of Appeals for the Fourth Circuit reversed the BIA, finding that its decision constituted a change in position the retroactive effect of which needed further consideration. See id. at 784 (discussing Jimenez-Cedillo v. Sessions, 885 F.3d 292 (4th Cir. 2018)).

In reaffirming its prior holding, the BIA provided an overview of the growing danger and criminalization of online sexual solicitation of children nationwide. *See id.* at 784-85. It acknowledged prior legal developments related to the issue of whether a child molester knew or should have known that his or her victim was a child, culminating in *Matter of Silva-Trevino*, 26 I&N Dec. 826 (BIA 2016), *see Jimenez-Cedillo II*, 27 I&N Dec. at 785-87, and explained that sexual crimes against young children have historically not required a particular mental state regarding the victim's age in order to be a CIMT, *see id.* at 787-89, 791-93. The BIA reviewed well-established case law holding that statutory rape offenses are CIMTs regardless of the mental state or the availability of a mistake-of-age defense. *See id.* at 787-89. It also discussed similar precedent holding that child pornography and other offenses constitute CIMTs regardless of the lack of a mistake-of-age defense. *See id.* at 789-91.

With this backdrop, the BIA reaffirmed its prior ruling that a violation of MCL § 3-324(b) is categorically a CIMT. *See id.* at 792-94. Because the Fourth Circuit had specifically found that ruling to be a change in position, however, the BIA stated that it would not apply the ruling retroactively to the respondent or other cases in the Fourth Circuit. *See id.* at 794. The BIA also found the respondent's offense not to be a crime of child abuse because no actual child had been involved. *See id.* Accordingly, the BIA remanded the case to the Immigration Judge for consideration of the respondent's application for cancellation of removal, noting that the respondent's conviction remains an adverse discretionary factor. *See id.*

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If there are any questions about this guidance, *Jimenez-Cedillo I, Jimenez Cedillo II*, crimes involving moral turpitude, or crimes of child abuse, please do hesitate to reach out to ILPD (b)(7)(E) (b)(7)(

Thank you,

Ken Padilla

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