

**From:** (b)(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)@ice.dhs.gov or (b)(7)(E)@ice.dhs.gov).

Thank you,

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