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Title Matter of Jimenez-Cedillo, 27 I&N Dec. 1 (BIA Apr. 6, 2017)  
[Summary and Practice Pointers]

Circuit/Board

Topic Crimmigration--CIMT

Body On April 6, 2017, the Board of Immigration Appeals (Board or BIA) issued *Matter of Jimenez-Cedillo*, 27 I&N Dec. 1 (BIA 2017), in which the Board concluded that a sexual offense in violation of a statute enacted to protect children is a crime involving moral turpitude where the victim is particularly young—that is, under 14 years of age—or is under 16 and the age differential between the perpetrator and victim is significant, or both, even though the statute requires no culpable mental state as to the age of the victim.

The respondent, a native and citizen of Mexico, conceded removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), but contested whether his conviction for sexual solicitation of a minor under section 3-324(b) of the Maryland Criminal Law was for a crime involving moral turpitude rendering him ineligible for cancellation of removal under INA § 240A(b). *Jimenez-Cedillo*, 27 I&N Dec. at 1-2. The Immigration Judge found that conviction to be for a crime involving moral turpitude and denied all relief except voluntary departure. *Id.* at 1.

At the time of his conviction, Maryland Criminal Law § 3-324(b) provided: “A person may not, *with the intent to commit a violation of . . . § 3-307 of this subtitle . . . , knowingly solicit a minor*, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under . . . § 3-307 of this subtitle . . . .” 27 I&N Dec. at 2. Maryland Criminal Law § 3-307(a), in turn, listed five different types of conduct. *See id.* The Board observed that the first two types “necessarily involve sexual contact with a victim whose lack of consent is either explicit or implicit.” 27 I&N Dec. at 4. The Board further noted that the last three types of conduct involve sexual contact between victims and perpetrators under certain age parameters, but do not require “a culpable mental state with respect to the age of the victim.” *Id.* The Board cited *Matter of Silva-Trevino*, 26 I&N Dec. 826 (BIA 2016), for the definition of “crime involving moral turpitude” and the requirement of both reprehensible conduct and a culpable mental state. *See* 27 I&N Dec. at 3. The Board also reiterated the rule from *Silva-Trevino* that the categorical approach applies to determining whether an offense is a crime involving moral turpitude. *See id.* The respondent argued that the Maryland criminal statutes are overbroad because they encompass consensual sexual contact and do not require a culpable mental state regarding the age of the victim. *Id.*

The Board concluded that a violation of Maryland Criminal Law § 3-324(b) is categorically a crime involving moral turpitude, finding the culpable mental state satisfied insofar as the Maryland offense required that the perpetrator “knowingly solicit a minor.” See 27 I&N Dec. at 3-4. Turning to the requisite reprehensible conduct, the Board concluded that moral turpitude inheres in all violations of Maryland Criminal Law § 3-307(a). See 27 I&N Dec. at 4. The Board relied on prior precedent in concluding that subsections (a)(1) and (a)(2), which involve victims whose lack of consent is either explicit or implicit, involve moral turpitude. See *id.* The Board found that while subsections (a)(3), (a)(4), and (a)(5) require intentional sexual contact with a victim under age 16, the statute does not allow for a mistake-of-age defense. See *id.* (citing *Moore v. State*, 882 A.2d 256, 268 (Md. 2005)). In this regard, the Board noted that in *Silva-Trevino*, 26 I&N at 834 n.9, it had reserved the question of whether statutory rape offenses that “do not require a perpetrator to have knowledge of the age of the victim . . . are crimes involving moral turpitude.” 27 I&N Dec. at 4.

The Board then held that “a sexual offense in violation of a statute enacted to protect children is a crime involving moral turpitude where the victim is particularly young—that is, under 14 years of age—or is under 16 and the age differential between the perpetrator and victim is significant, or both, even though the statute requires no culpable mental state as to the age of the child.” *Id.* at 5. The Board explained that such an offense is reprehensible because it contravenes society’s interest in protecting children, and that the commission of such an offense satisfies implicitly the culpable mental state for a crime involving moral turpitude. See *id.* at 5-6. Turning to subsections (a)(3), (a)(4), and (a)(5) of Maryland Criminal Law § 3-307, the Board found that each required either a sufficiently young victim or, for older victims, a six-year age differential, thus qualifying each offense as a crime involving moral turpitude. See 27 I&N Dec. at 6. Finally, the Board acknowledged that Maryland Criminal Law § 3-324(b) also reaches knowingly soliciting a law enforcement officer who is posing as a minor to engage in sexual activity, but found this offense to be equivalent to an attempt to engage an actual minor in sexual activity, relying on longstanding precedent on inchoate offenses. See 27 I&N Dec. at 6-7.

Having found the conviction to be for a crime involving moral turpitude, the Board affirmed the Immigration Judge’s decision on the issue. See *id.* at 7. However, because the respondent failed to submit evidence of posting the voluntary departure bond, the Board declined to reinstate the grant of voluntary departure and ordered him removed. See *id.*

Practice Pointers

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If there are any questions about *Jimenez-Cedillo* or crimes involving moral turpitude in general, please reach out to the ILPD East or West mailboxes (b)(7)(C)@ice.dhs.gov or (b)(7)(C)@ice.dhs.gov, as appropriate.

Effective Date

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