

Amicus Invitation No. 21-17-11
AMICUS INVITATION (Crime Involving Moral Turpitude), Due Date: December 8, 2021

November 17, 2021

The Board of Immigration Appeals welcomes interested members of the public to file amicus curiae briefs discussing the below issue:

ISSUE PRESENTED:

In *Hernandez v. Whitaker*, 914 F.3d 430 (6th Cir. 2019), the United States Court of Appeals for the Sixth Circuit concluded that section 750.82 of the Michigan Compiled Laws is not divisible and that the minimum conduct at issue therein – i.e., the intent to place a victim in reasonable fear or apprehension of an immediate battery – could not satisfy the definition of a crime involving moral turpitude. See *Hernandez v. Whitaker*, 914 F.3d at 434 (citing *Hanna v. Holder*, 740 F.3d 379 (6th Cir. 2014) for proposition that section 750.82 “is not categorically a CIMT”).

Considering that the respondent’s statute of conviction (section 750.81a(1) of the Michigan Compiled Laws) shares the same mens rea requirement as the statute addressed in *Hernandez v. Whitaker*, i.e., the intent to injure or to place a victim in reasonable fear or apprehension of an immediate battery, address whether the respondent’s conviction is a crime involving moral turpitude, considering and analyzing the effect of our decisions in *Matter of Wu*, 27 I&N Dec. 8 (BIA 2017) and *Matter of J-G-P-*, 27 I&N Dec. 642 (BIA 2019) and the Sixth Circuit’s decisions in *Hernandez v. Whitaker*, *supra*, and *Hanna v. Holder*, *supra*.

Additionally, address the application of the “realistic probability” inquiry to the question of the respondent’s removability under section 237(a)(2)(A)(i) of the Immigration and Nationality Act, in light of *Matter of Salad*, 27 I&N Dec. 733 (BIA 2020) and other binding decisions of the Board and/or the Sixth Circuit.

Request to Appear as Amicus Curiae: Members of the public who wish to appear as amicus curiae before the Board must submit a Request to Appear as Amicus Curiae (“Request to Appear”) pursuant to Chapter 2.10, Appendix B (Directory), and Appendix F (Sample Cover Page) of the Board of Immigration Appeals Practice Manual. The Request to Appear must explicitly identify that it is responding to Amicus Invitation No. **21-17-11**. The decision to accept or deny a Request to Appear is within the sole discretion of the Board. Please see Chapter 2.10 of the Board Practice Manual.

Filing a Brief: Please file your amicus brief in conjunction with your Request to Appear pursuant to Chapter 2.10 of the Board of Immigration Appeals Practice Manual. The brief accompanying the Request to Appear must explicitly identify that it is responding to Amicus Invitation No. **21-17-11**. An amicus curiae brief is helpful to the Board if it presents relevant legal arguments that the parties have not already addressed. However, an amicus brief must be limited to a legal discussion of the issue(s) presented. The decision to accept or deny an amicus brief is within the sole discretion of the Board. The Board will not consider a brief that exceeds the scope of the amicus invitation.

Request for Case Information: Additional information about the case is not available in the subject matter case.

Page Limit: The Board asks that amicus curiae briefs be limited to 25 double-spaced pages.

Deadline: Please file a Request to Appear and brief with the Clerk's Office at the address below by **December 8, 2021**. Your request must be received at the Clerk's Office within the prescribed time limit. Motions to extend the time for filing a Request to Appear and brief are disfavored. The briefs or extension request must be RECEIVED at the Board on or before the due date. It is *not* sufficient simply to mail the documents on time. We strongly urge the use of an overnight courier service to ensure the timely filing of your brief.

Service: Please mail three copies of your Request to Appear and brief to the Clerk's Office at the address below. If the Clerk's Office accepts your brief, it will then serve a copy on the parties and provide parties time to respond.

Joint Requests: The filing of parallel and identical or similarly worded briefs from multiple amici is disfavored. Rather, collaborating amici should submit a joint Request to Appear and brief. *See generally* Chapter 2.10 (Amicus Curiae).

Notice: A Request to Appear may be filed by an attorney, accredited representative, or an organization represented by an attorney registered to practice before the Board pursuant to 8 C.F.R. § 1292.1(f). A Request to Appear filed by a person specified under 8 U.S.C. § 1367(a)(1) will not be considered.

Attribution: Should the Board decide to publish a decision, the Board may, at its discretion, name up to three attorneys or representatives. If you wish a different set of three names or you have a preference on the order of the three names, please specify the three names in your Request to Appear and brief.

Clerk's Office Contact and Filing Address:

To send by courier or overnight delivery service, or to deliver in person:

Amicus Clerk
Board of Immigration Appeals
Clerk's Office
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041
703-605-1007

Business hours: Monday through Friday, 8:00 a.m. to 4:30 p.m.

Fee: A fee is not required for the filing of a Request to Appear and amicus brief.