No. _____

In the
Supreme Court of the United States

RAUL GUZMAN-IBAREZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

Petition for Writ of Certiorari

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Question Presented

Does the provision of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) that expanded the definition of "aggravated felony" apply only to new immigration proceedings that were initiated after the date of its enactment (as the Fourth and Sixth Circuits have held), or does it apply whenever an immigration judge or the Board of Immigration Appeals issues a decision after that date (as the First, Third, Fifth, Seventh, and Ninth Circuits have held)?

[When the petitioner presented this question in a previous petition, the Court ordered a response but then denied the petition after the government argued (among other things) that it was premature because the Ninth Circuit's decision was interlocutory at that point. *See* Case No. 15-8280.]

Related Proceedings

United States Court of Appeals for the Ninth Circuit

United States v. Raul Guzman-Ibarez, Case No. 14-50142.

Opinion Entered: July 6, 2015; Mandate Entered: December 31, 2015.

United States v. Raul Guzman-Ibarez, Case No. 17-50141.

Memorandum Decision Entered: January 6, 2020; Mandate Entered: January 28, 2020.

United States District Court for the Central District of California

United States v. Raul Guzman-Ibarez, Case No. CR-12-00843-DMG.

Judgment Entered: March 26, 2014.

Order on Remand Reinstating Judgment Entered: April 24, 2017.

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Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Raul Guzman-Ibarez petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit in his case.

Opinions Below

The Ninth Circuit's memorandum decision in *United States v. Guzman-Ibarez*, Case No. 17-50141, was not published. App. 1-4a.[1] But it's prior relevant opinion in *United States v. Guzman-Ibarez*, Case No. 14-50142, was published at 792 F.3d 1094 (9th Cir. 2015). App. 12-19a. The relevant district court orders in *United States v. Guzman-Ibarez*, Case No. CR-12-00843-DMG, were not published. App. 5-10a, 20-27a.

[1] "App." refers to the attached appendix. "ER" refers to the appellant's excerpts of record electronically filed in the Ninth Circuit on July 20, 2018 (Docket No. 16). "AOB" refers to the appellant's opening brief electronically filed in the Ninth Circuit on July 20, 2018 (Docket No. 15).

Jurisdiction

The Ninth Circuit issued its memorandum decision on January 6, 2020. App. 1a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions Involved

8 U.S.C. § 1326(d) provides:

> (d) *Limitation on collateral attack on underlying deportation order*. In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) of this section or subsection (b) of this section unless the alien demonstrates that –
>
> (1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;
>
> (2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and
>
> (3) the entry of the order was fundamentally unfair.

Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, Division C, § 321, 110 Stat. 3009 (1996), provides:

Sec. 321. Amended Definition of Aggravated Felony.

(a) *In General*. – Section 101(a)(43) (8 U.S.C. 1101(a)(43)), as amended by section 441(e) of the Antiterrorism and Effective Death Penalty Act of 1996 (P.L. 104-132), is amended —

(1) in subparagraph (A), by inserting ", rape, or sexual abuse of a minor" after "murder";

(2) in subparagraph (D), by striking "$100,000" and inserting "$10,000";

(3) in subparagraphs (F), (G), (N), and (P), by striking "is at least 5 years" each place it appears and inserting "at least one year";

(4) in subparagraph (J), by striking "sentence of 5 years' imprisonment" and inserting "sentence of one year imprisonment";

(5) in subparagraph (K)(ii), by inserting "if committed" before "for commercial advantage";

(6) in subparagraph (L) –

(A) by striking "or" at the end of clause (i),

(B) by inserting "or" at the end of clause (ii), and

(C) by adding at the end the following new clause:

"(iii) section 601 of the National Security Act of 1947 (relating to protecting the identity of undercover agents);";

(7) in subparagraph (M), by striking "$200,000" each place it appears and inserting "$10,000";

(8) in subparagraph (N), by striking "for which the term" and all that follows and inserting the following: ", except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act";

(9) in subparagraph (P), by striking "18 months" and inserting "12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act";

(10) in subparagraph (R), by striking "for which a sentence of 5 years' imprisonment or more may be imposed" and inserting "for which the term of imprisonment is at least one year"; and

(11) in subparagraph (S), by striking "for which a sentence of 5 years' imprisonment or more may be imposed" and inserting "for which the term of imprisonment is at least one year".

(b) *Effective Date of Definition*. – Section 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended by adding at the end the following new sentence: "Notwithstanding any other provision of law (including any effective date), the term applies

regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph.".

(c) *Effective Date*. – The amendments made by this section shall apply to actions taken on or after the date of the enactment of this Act, regardless of when the conviction occurred, and shall apply under section 276(b) of the Immigration and Nationality Act only to violations of section 276(a) of such Act occurring on or after such date.

Introduction

There's a circuit conflict about whether the provision of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, Division C, § 321(a), 110 Stat. 3009 (1996), that expanded the definition of "aggravated felony" applies only to new immigration proceedings that were initiated after the date of its enactment (as the Fourth and Sixth Circuits have held) or applies whenever an immigration judge or the Board of Immigration Appeals issues a decision after that date (as the First, Third, Fifth, Seventh, and Ninth Circuits have held). When the petitioner, Raul Guzman-Ibarez, presented this question in a previous petition, the Court ordered a response but then denied the petition after the government argued (among other things) that it was premature because the Ninth Circuit's decision was interlocutory at that point. *See* Case No. 15-8280. After that, the district court reinstated Guzman-Ibarez's conviction for being an alien found in the United States without permission following deportation in violation of 8 U.S.C. § 1326, and the Ninth Circuit affirmed that ruling. Guzman-Ibarez preserved the

IIRIRA-retroactivity issue in both courts, so the matter is now ripe. The Court should therefore grant review to resolve the circuit conflict on this important issue.

Statement of the Case

Raul Guzman-Ibarez was born in Mexico, but he was brought to this country in 1979, when he was just six years old. App. 14a, 21a. Ten years later, he became a lawful permanent resident. App. 14a, 21a.

As a young man, Guzman-Ibarez got involved in criminal activity. In 1992, at age 18, he was convicted for carrying a concealed weapon in a vehicle. App. 21a. In the following few years, he sustained other convictions not relevant to this petition. App. 21a.

In December 1995, the INS commenced deportation proceedings against Guzman-Ibarez. App. 14-15a, 21a. The immigration judge granted continuances so he could apply for discretionary relief from deportation. App. 21a. But in February 1997, Guzman-Ibarez was convicted of robbery in violation of California Penal Code § 211, and he was sentenced to four years in prison. App. 14-15a, 21-22a. The immigration judge therefore "administratively closed" his deportation case until he was out of custody. App. 14a, 22a. Administrative closure is simply a procedural tool of convenience to remove a case from an immigration court's active docket; it does not result in a final order or otherwise end the proceedings. *See Romero v. Barr*, 937 F.3d 282, 287-88 (4th Cir. 2019).

The deportation case resumed in July 1999, when Guzman-Ibarez finished serving his state robbery sentence. App. 14a, 22a. At the final hearing the following month, the immigration

judge found that he was deportable on based on his firearm and robbery convictions and that he was ineligible for any discretionary relief from deportation due to the robbery conviction, so he was deported. App. 14a, 22a. Subsequently, Guzman-Ibarez returned and was deported four more times (in 2000, 2002, 2004, and 2010); each removal was a reinstatement of the 1999 deportation order. App. 14a, 22a & n.2.

In July 2012, Guzman-Ibarez was discovered by immigration authorities and charged with violating 8 U.S.C. § 1326 by being an alien found in the United States without permission following deportation. App. 14a, 21a. He filed a motion to dismiss the indictment pursuant to § 1326(d) on the grounds that his 1999 deportation—on which all his subsequent deportations were based—was fundamentally unfair. App. 14a, 21-22a. The district court concluded that there were no due-process violations during the deportation proceedings, so it denied the motion. App. 23-27a.

On appeal, there was no dispute that Guzman-Ibarez was not in fact deportable based on his firearm conviction, so the lawfulness of his deportations hinged on his robbery conviction, a purported aggravated felony. App. 15a & n.7. There was also no dispute that that robbery conviction would not have qualified as an aggravated felony under the law as it existed at the time the deportation proceedings commenced in 1995. App. 15-16a. At that time, a theft offense was only an aggravated felony if the sentence imposed was at least five years, and Guzman-Ibarez received a four-year sentence. App. 16a. But in 1996, while his deportation case was still pending, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, Division C, § 321(a), 110 Stat. 3009 (1996), which significantly

expanded the definition of "aggravated felony" in 8 U.S.C. § 1101(a)(43). App. 15-16a. Among other things, it made theft offenses aggravated felonies if the sentence imposed was at least one year. *See* IIRIRA, § 321(a)(3). App. 16a. Under the post-IIRIRA definition, Guzman-Ibarez's robbery conviction would qualify as an aggravated felony, assuming it is a theft offense. App. 16a.

As discussed below, there is a circuit conflict about whether IIRIRA's expanded definition of "aggravated felony" applies to immigration proceedings that had begun before the date of its enactment. In deciding Guzman-Ibarez's case in 2015, the Ninth Circuit followed its precedent holding that it does, so it found that he was deportable in 1999 based on his robbery conviction. App. 16a. But it then concluded that the immigration judge erroneously failed to advise Guzman-Ibarez that he was eligible for a certain type of discretionary relief from deportation. App. 16-17a. The Ninth Circuit therefore vacated his conviction and remanded the case to the district court so that it could consider whether he was prejudiced by the deprivation of his due-process rights; the district court was instructed to dismiss the case if there was such prejudice and to reinstate the conviction if there wasn't. App. 17a.

In 2015, Guzman-Ibarez filed a petition for a writ of certiorari asking the Court to resolve the circuit conflict about the retroactivity of IIRIRA's expanded definition of "aggravated felony" (the same question presented in the current petition). *See* Case No. 15-8280. After the Court ordered a response, the government filed an opposition arguing (among other things) that the petition was premature because the Ninth Circuit's decision was interlocutory at that point. *Id.*, BIO 10-11. Thereafter, the Court denied the petition. App. 11a.

On remand to the district court, Guzman-Ibarez addressed the issue covered by the Ninth Circuit's mandate, namely, whether re was prejudiced by the immigration judge's failure to advise him that he was eligible for a certain type of discretionary relief from deportation. ER 362-67. But he also argued again that his robbery conviction should not have been treated as an aggravated felony under IIRIRA, recognizing that the Ninth Circuit had rejected that argument but raising it nevertheless to preserve it for possible review by this Court. ER 361-62. The district court then denied Guzman-Ibarez's motion to dismiss and reinstated his conviction. App. 5-10a.

In his appeal to the Ninth Circuit from that ruling, Guzman-Ibarez (in addition to addressing other matters not relevant to this petition) once again raised the IIRIRA retroactivity issue to preserve it for review by this Court. AOB 29-31. The Ninth Circuit issued a memorandum decision affirming the district court. App. 1-4a.

Reasons for Granting the Writ

The Court should grant review to address a circuit conflict on the important issue of whether the provision of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) that expanded the definition of "aggravated felony" applies to immigration proceedings that were pending on the date of its enactment.

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, Division C, § 321(a), 110 Stat. 3009 (1996), significantly expanded the definition of "aggravated felony" in 8 U.S.C. § 1101(a)(43). The circuits are split on the effective date of this change. The Fourth and Sixth Circuits have held that IIRIRA's amended definition of aggravated felony applies only to new immigration proceedings that were initiated after the date of its enactment. *See Saqr v. Holder*, 580 F.3d 414, 420-22 (6th Cir. 2009); *Tran v. Gonzales*, 447 F.3d 937, 940-41 (6th Cir. 2006); *Tobar-Barrera v. Holder*, 549 Fed.Appx. 124, 127-29 (4th Cir. 2013). But the First, Third, Fifth, Seventh, and Ninth Circuits have held that the new definition applies if the immigration judge or the Board of Immigration Appeals (BIA) issues a decision after IIRIRA's enactment. *See Biskupski v. Attorney General*, 503 F.3d 274, 281-83 (3rd Cir. 2007); *Garrido-Morato v. Gonzales*, 485 F.3d 319, 323-24 (5th Cir. 2007); *Park v. INS*, 252 F.3d 1018, 1025 (9th Cir. 2001), *overruled on other grounds, Fernandez-Ruiz v. Gonzales*, 466 F.3d 1121 (9th Cir. 2006) (en banc); *Xiong v. INS*, 173 F.3d 601, 607 (7th Cir. 1999);

Choeum v. INS, 129 F.3d 29, 35-37 (1st Cir. 1997). The Court should grant review to resolve this conflict. *See* Sup. Ct. R. 10(a).

The relevant section of IIRIRA has two effective-date provisions. The first provides that the new aggravated-felony definition applies "regardless of whether *the conviction* was entered before, on, or after the date of enactment[.]" *See* IIRIRA, § 321(b) (emphasis added). The second provides that the new definition "shall apply to *actions taken* on or after the date of the enactment of this Act, regardless of when the conviction occurred[.]" *See* IIRIRA, § 321(c) (emphasis added). One Ninth Circuit judge has recognized that, read together, IIRIRA § 321's two effective-date provisions "require[] that the modified definition of aggravated felony apply to convictions that occurred before the enactment of IIRIRA, but only if the immigration proceeding[s] were initiated after enactment of the Act." *Ledezma-Galicia v. Holder*, 636 F.3d 1059, 1085 (9th Cir. 2010) (Bybee, CJ, dissenting).[2]

That position is consistent with the conclusions reached by the Fourth and Sixth Circuits, which have interpreted the phrase "actions taken" in the second effective-date provision—§ 321(c)—to mean that IIRIRA's amended definition of aggravated felony applies only to new immigration proceedings initiated after it was enacted. *Saqr*, 580 F.3d at 420-22; *Tran*, 447 F.3d at 940-41; *Tobar-Barrera*, 549 Fed.Appx. at 127-29. When asked by the government to read "actions taken" to cover all adjudications occurring on or after IIRIRA's enactment, these courts

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[2] The primary issue in *Ledezma-Galicia* was whether amendments made to the Immigration and Nationality Act by the Anti-Drug Abuse Act of 1988 were retroactive, but both the majority and the dissent looked to IIRIRA as well. *Id*. at 1079-80 & n.23, 1085-86 & n.1.

"decline[d] to interpret the statute to say something Congress chose not to say." *Tobar-Barrera*, 549 Fed.Appx. at 128. After all, "Congress did not say, as it well knows how to say when it chooses, that the amended definition would apply in all proceedings ''pending on or after the date of enactment of the Act.'"" *Id*. On the contrary, the actions-taken language reflects Congress's manifest intent to *limit* the retroactive application of the amended definition of "aggravated felony" to fewer than all such proceedings. *Id*. Therefore, applying the amended definition to pending removal proceedings "would be reading out of the statute the very limitation on retroactivity that Congress intended." *Id*. Thus, the language of § 321(c) "speaks for itself"—it "explicitly limits the expanded definition of 'aggravated felony' to prospective deportation proceedings." *Tran*, 447 F.3d at 941; *see also Saqr*, 580 F.3d at 422 ("term 'action taken' appears to this Court to derive from the point at which the removal action begins for purposes of determining whether the pre- or post-IIRIRA definition of aggravated felony applies").

This interpretation of the critical phrase also "accounts for the statutory and regulatory scheme that governs removal proceedings" and "makes section 321(c) analysis consistent with the approach … used to determine eligibility for other discretionary relief provided by immigration officers." *Tobar-Barrera*, 549 Fed.Appx. at 128 (citing *Saqr*, 580 F.3d at 421-22). Under 8 U.S.C. § 1229, removal proceedings are initiated by serving an alien with an order to show cause or notice to appear. *Saqr*, 580 F.3d at 421. And regulations suggest that "actions taken" refers to this moment rather than some later point. *Id*. at 421-22 (discussing regulations).

Finally, this narrow interpretation of § 321(c) "aligns with the basic notions of fairness that are implicated when the rules concerning relief are changed in the middle of an alien's ongoing removal proceedings." *Tobar-Barrera*, 549 Fed.Appx. at 128; *see also id*. at 129 n.5 (citing *Saqr*, 580 F.3d at 422).

The Ninth Circuit considered § 321(c)'s actions-taken language in *Valderrama-Fonseca v. INS*, 116 F.3d 853 (9th Cir. 1997), albeit in a different context. In that case, all of the proceedings before the immigration judge and the BIA occurred prior to IIRIRA's enactment, so the issue was whether "actions taken" encompassed a court of appeals' review as well. *Id*. at 854-55. The Ninth Circuit held that it didn't because "it is more natural to think of courts of appeals as reviewing 'actions taken' by others." *Id*. at 855-56.[3] The Ninth Circuit wrote, "it is apparent that Congress knew how to make provisions of IIRIRA applicable to pending proceedings when it wanted to, and not having done so in terms in § 321(c), we hesitate to read retroactivity into the effective date provision itself." *Id*. at 856.[4]

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[3] *Contrast Mendez-Morales v. INS*, 119 F.3d 738, 739 (8th Cir. 1997) (holding—without analysis and in direct conflict with *Valderrama-Fonseca*—that post-IIRIRA review by Court of Appeals of immigration proceedings that occurred before IIRIRA would be an "action taken" for purposes of §321(c)).

[4] As an example of Congress knowing how to make provisions of IIRIRA applicable to pending proceedings, the Ninth Circuit cited IIRIRA § 348(b) (Waivers for Immigrants Convicted of Crimes): "The amendment made by subsection (a) shall be effective on the date of enactment of this Act and shall apply in the case of any alien who is in exclusion or deportation

Valderrama-Fonseca did not address the issue presented here because all of the proceedings before the immigration judge and the BIA occurred before IIRIRA's enactment date. *Id*. at 854-55. Thus, the Ninth Circuit did not consider whether "'actions taken' refers exclusively to the commencement of deportation proceedings against the alien." *Choeum*, 129 F.3d at 37. That court did assert that "actions taken" could refer "to orders and decisions issued against an alien by the Attorney General acting through the BIA or Immigration Judge" and that "the tenor of the effective date provision is to make the aggravated felony amendments applicable to anything done by the Attorney General after the effective date[.]" *Valderrama-Fonseca*, 116 F.3d at 856-57. But these statements must be read in context with *Valderrama-Fonseca*'s limited holding (that circuit review of a BIA decision is not encompassed by "actions taken") and its recognition that Congress knew how to make provisions of IIRIRA applicable to pending proceedings but did not do that in § 321(c). *Id*. In other words, the core of the Ninth Circuit's holding was that § 321(c) does *not* make the relevant amendments retroactively applicable to pending proceedings. *Valderrama-Fonseca* is therefore consistent with the decisions of the Fourth and Sixth Circuits interpreting that provision.

Nevertheless, in two subsequent cases, the Ninth Circuit relied on the orders-and-decisions-issued-by-the-Attorney-General language in *Valderrama-Fonseca* to presume that the date of a BIA decision, rather than the date the original immigration proceedings were initiated, controls with regard to IIRIRA's effective-date provision. First, in *Ortiz v. INS*, 179 F.3d 1148, 1150-52,

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proceedings as of such date unless a final administrative order in such proceedings has been entered as of such date." *Id*. at 856 n.6.

1155-56 (9th Cir. 1999), it applied IIRIRA's amended aggravated-felony definition in a case where the immigration judge held the final hearing on the alien's asylum application before the law's enactment but the BIA did not issue its ruling on appeal until after the enactment. Then, in *Park v. INS*, 252 F.3d at 1020-21, 1025, the Ninth Circuit applied the amended aggravated-felony definition in a case where deportation proceedings were initiated against the alien before IIRIRA was signed into law but both the final deportation hearing before the immigration judge and the subsequent appeal to the BIA occurred afterwards. Neither of these decisions included any substantive discussion of the retroactivity issue—they simply cited *Valderrama-Fonseca* as being dispositive of that issue without appreciating the above-described nuances of that opinion. There was no statutory analysis of the kind found in the decisions of the Fourth and Sixth Circuits.

The other cases on the wrong side of the circuit split can all be traced back to this same misreading of *Valderrama-Fonseca*. In *Choeum v. INS*, 129 F.3d at 36-37, the First Circuit "largely agree[d] with the holding of *Valderrama-Fonseca*" and adopted the definition of "actions taken" referring to actions and decisions of the Attorney General. But the First Circuit did not really address the alien's argument that "actions taken" refers exclusively to the initiation of deportation proceedings, except to note that the Ninth Circuit had not considered that argument in *Valderrama-Fonseca*. *Id.* at 37. And in *Xiong v. INS*, 173 F.3d at 607, the Seventh Circuit simply cited *Valderrama-Fonseca* and *Choeum*, without further analysis, for the proposition that "'[a]ctions taken' are actions and decisions of the Attorney General acting through an immigration judge or the BIA." Similarly, in *Garrido-Morato v. Gonzales*, 485 F.3d

at 323-24 & n.4, the Fifth Circuit cited *Ortiz* (which, as noted above, relied on *Valderrama-Fonseca*), *Choeum*, and *Xiong* as holding "that 'actions taken' are decisions of the Attorney General's representatives with regard to a particular alien." And finally, in *Biskupski v. Attorney General*, 503 F.3d at 281-83, the Third Circuit followed *Valderrama-Fonseca*, *Choeum*, *Xiong*, and *Garrido-Morato* to reach the same conclusion.[5]

To summarize, *Valderrama-Fonseca* was misread and misapplied by the First, Third, Fifth, Seventh, and Ninth Circuits to incorrectly hold that the new aggravated-felony definition applies whenever an immigration judge or the BIA takes any action after IIRIRA's enactment. In contrast, the Fourth and Sixth Circuits have correctly held that the new definition applies only to immigration proceedings that were initiated after that date. This Court should resolve the conflict on this important issue. *See* Sup. Ct. R. 10(a).

As demonstrated by this case—where Guzman-Ibarez's initial 1999 deportation order was reinstated multiple times in the following decade (App. 14a, 22a)—removals and criminal prosecutions have been and will continue to be based on deportation proceedings from the relevant time period. *See e.g. United States v. Arias-Ordonez*, 597 F.3d 972, 982 (9th Cir. 2010) ("a successful collateral attack on a removal order precludes reliance on a reinstatement of that

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[5] BIA cases adopting a broad reading of "actions taken" are similarly rooted in *Valderrama-Fonseca*. *See In re Batista-Hernandez*, 21 I. & N. Dec. 955, 961 (BIA 1997) (citing *Valderrama-Fonseca*); *In re Sweetser*, 22 I. & N. Dec. 709, 712 (BIA 1999) (citing *Batista-Hernandez*); *In re Truong*, 22 I. & N. Dec. 1090, 1096 (BIA 1999) (citing *Valderrama-Fonseca* and *Batista-Hernandez*).

same order in criminal proceedings for illegal reentry"). In fact, six of the above-discussed cases addressing this issue were decided in the past 14 years. *See Guzman-Ibarez* (2015); *Tobar-Barrera* (2013); *Saqr* (2009); *Biskupski* (2007); *Garrido-Morato* (2007); *Tran* (2006). And these cases are undoubtedly the tip of the iceberg, so to speak, because the vast majority of cases where this issue presents itself will not result in appellate decisions delving into the matter. *See, e.g., Sandoval-Ramirez v. Sessions*, 691 Fed.Appx. 209, 209-10 (5th Cir. 2017) (following *Garrido-Morato* without further analysis). Thus, the issue still arises with enough frequency to merit review by this Court. *See, e.g., Judulang v. Holder*, 565 U.S. 42, 45-52 (2011) (addressing circuit conflict regarding deportation relief that was repealed in 1996 but is still available to aliens whose removal is based on guilty pleas entered before that). And, of course, the correct resolution of this issue will have significant consequences for both aliens facing deportation and criminal defendants facing incarceration.

Moreover, this case presents an excellent vehicle to address this issue. Again, the lawfulness of Guzman-Ibarez's deportations hinges on whether his robbery conviction—for which he received a four-year sentence—was an aggravated felony, and it is undisputed that that conviction does not qualify as an aggravated felony under the law in effect when his deportation case began in 1995. App. 14-16a & n.7. At that time, a theft offense qualified as an aggravated felony if the sentence imposed was at least five years, but in 1996, IIRIRA changed the threshold sentence to at least one year. *See* IIRIRA, § 321(a)(3). App. 16a. Thus, assuming the robbery conviction is a theft offense, it is an aggravated felony under the law in effect when Guzman-

Ibarez's deportation case ended and he was deported in 1999. App. 15-16a. This case therefore squarely presents the issue at the heart of the circuit conflict.

Conclusion

For the foregoing reasons, the petitioner respectfully requests that this Court grant his petition for writ of certiorari.

March 20, 2020

Respectfully submitted,

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