Hernandez v. Whitaker: Because We Said So

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I. INTRODUCTION

In a succession of published and unpublished decisions, the U.S. Court of Appeals for the Sixth Circuit ("Sixth Circuit") has unjustifiably mischaracterized Michigan's "felonious assault" statute and ultimately held that felonious assault is not a crime involving moral turpitude ("CIMT").[1] The Sixth Circuit should reconsider its decision in *Hernandez v. Whitaker* and either reverse or provide a legally sound explanation for identifying Michigan's felonious assault statute as a non-CIMT offense.

II. *HERNANDEZ V. WHITAKER* CONTINUED A SUCCESSION OF UNCLEAR DECISIONS

In *Hernandez v. Whitaker*, the Sixth Circuit granted the petitioner's appeal of the Board of Immigration Appeals' ("BIA") decision "finding him removable on the basis that his felonious assault charge under Mich. Comp. Laws [MCL] § 750.82 is a [CIMT]."[2] The Sixth Circuit viewed the BIA's decision as "at odds with this circuit's precedent in *Hanna v. Holder*."[3]

In *Hanna v. Holder*, the Sixth Circuit reviewed whether the petitioner's concession to removability, made by his prior counsel, should be struck from the record.[4] Determinative for *Hanna* was the law regarding egregious circumstances that warrant "relieving the alien of his or her counsel's prejudicial admissions"[5]; the removability analysis was incidental. In fact, prior to *Hernandez*, the *Hanna* decision was cited for all premises *other than* a CIMT analysis of MCL § 750.82.[6] Moreover, *Hanna*'s CIMT analysis nearly

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1. *See* Hernandez v. Whitaker, 914 F.3d 430, 435 (6th Cir. 2019). Commission of a crime involving moral turpitude is a basis for removing an alien from the United States. *See* 8 U.S.C. § 1227(a)(2)(A)(i) (2008).

2. *Hernandez*, 914 F.3d at 432.

3. *Id.* at 434.

4. *See* Hanna v. Holder, 740 F.3d 379, 383 (6th Cir. 2014).

5. *Id.* at 388.

6. *See, e.g.*, Hassam v. Sessions, 897 F.3d 707, 719 (6th Cir. 2018) (firm resettlement); Shuti v. Lynch, 828 F.3d 440, 443 n.1 (6th Cir. 2016) (reviewing constitutional challenge despite concession of removability); Sanchez-Robles v. Lynch, 808 F.3d 688, 690 n.1 (6th Cir. 2015) (relief from attorney's concession); Harmon v. Holder, 758 F.3d 728, 733 (6th Cir. 2014) (firm resettlement); Mihus v. Sessions, 726 Fed. App'x 417, 423 (6th Cir. 2018) (BIA's reliance on law regarding relief from attorney's concession); Cruz-Osornio v. Lynch, 632 Fed. App'x 269, 270 (6th Cir. 2016) (standard of review); Kanu v. Lynch, 652 Fed. App'x 390, 394 (6th Cir. 2016) (same); Vasquez-Padilla v. Lynch, 657 Fed. App'x 414, 417 (6th Cir. 2016) (same); Palma-Campos v. Holder, 606 Fed. App'x 284, 286 (6th Cir. 2015) (same); Singh v. Holder, 658 Fed. App'x 432, 434 (6th Cir. 2014) (relief from attorney's concession); Cano-Huerta v. Holder, 568 Fed. App'x 371, 372–73 (6th Cir. 2014) (standard of review); *see*

replicated the analysis in *Singh v. Holder*, an unpublished Sixth Circuit decision.[7] Because *Hernandez* relies on *Hanna*, and *Hanna* relies almost exclusively on *Singh*, it is vital to examine *Singh*'s analysis of MCL § 750.82.

A. Singh Stated That Michigan's Felonious Assault Statute is Potentially Divisible

Singh identified two cases that held MCL § 750.82 to constitute a CIMT,[8] but the court deemed the prior analyses insufficient and continued to examine the statute and Michigan case law.[9] As a result, *Singh* divided the statute into two parts: (1) assault with intent to harm, and (2) assault with intent to cause apprehension of harm.[10] First, *Singh* discussed the varying definitions of assault throughout the states, but it avoided discussing whether assault with intent to cause harm in violation of the Michigan statute is a CIMT.[11] Second, *Singh* stated that assault with intent to cause an apprehension of harm is less morally turpitudinous; *Singh* did not state that intent to cause apprehension of harm is *not* morally turpitudinous.[12] To reach this conclusion, the Sixth Circuit reasoned that assault with intent to cause apprehension of harm "requires no intention to physically harm another person."[13] However, rather than grounding its analysis in state and federal legal precedent, the Sixth Circuit relied on its imagination.[14] Most importantly,

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also Esther K. Hong, Note, *Fixing Deference in Youth Crimmigration Cases*, 48 N.M. L. REV. 330, 348 (2018) ("The clearest example of this is the BIA and Sixth Circuit's evaluation of Michigan's youthful offender statute."); Elizabeth Keyes, *Zealous Advocacy: Pushing Against the Borders in Immigration Litigation*, 45 SETON HALL L. REV. 475, 531 n.265 (2015) ("Indeed, the Sixth Circuit just found that an unwarranted concession of removability by an immigrant's prior counsel constituted egregious circumstances, sufficient to allow the individual to reopen proceedings and withdraw the original admissions and concessions."); Christopher N. Lasch, *Crimmigration and the Right to Counsel at the Border Between Civil and Criminal Proceedings*, 99 IOWA L. REV. 2131, 2158 n.136 (2014) (citing *Hanna v Holder* for "holding constitutional principles irrelevant in determining what constitutes a 'conviction' for 'crime'").

7. *See Hanna*, 740 F.3d at 389–90, 392–93; *see also* Singh v. Holder, 321 Fed. App'x 473 (6th Cir. 2009).

8. *See Singh*, 321 Fed. App'x at 478–79 (citing Atoui v. Ashcroft, 107 Fed. App'x 591, 593 (6th Cir. 2004), and Jaadan v. Gonzales, 211 Fed. App'x 422, 428 (6th Cir. 2006)). Contrary to *Hernandez*'s reasoning, *Atoui v. Ashcroft* relied on the dangerous weapon element to deem the offense a CIMT. *Compare Atoui*, 107 Fed. App'x at 593, *with Hernandez*, 914 F.3d at 434. A similar conclusion was reached in *Jaadan v. Gonzales*. *Compare Jaadan*, 211 Fed. App'x at 428, *with Hernandez*, 914 F.3d at 434.

9. *See Singh,* 321 Fed. App'x at 478–79.

10. *See id.* at 479.

11. *See id.*

12. *See id.* ("The apprehension variety of assault is less morally turpitudinous than the attempted-battery variety, as it requires no intention to physically harm another person.").

13. *See id.*

14. *See id.* at 479–80. *Singh* again engaged in a comparison of "more" or "less" turpitudinous, rather than "turpitudinous" or "not turpitudinous."

Singh never held MCL § 750.82 to be divisible[15]—the Sixth Circuit ultimately remanded the matter to the BIA for reconsideration.[16]

Thus, *Singh* never held that MCL § 750.82 is divisible—it merely signaled to the BIA that the statute is *potentially* divisible.[17]

B. Hanna Misconstrued Singh

There are two glaring issues with *Hanna*'s reliance on *Singh*. First, aside from a vague reference to a decision by the U.S. Court of Appeals for the Second Circuit,[18] *Hanna* relies primarily on *Singh* for finding the Michigan statute divisible.[19] Despite *Singh*'s inconclusive gesture that MCL § 750.82 is *potentially* divisible, *Hanna* signals that the statute is *likely* divisible.[20] "Potentially"[21] divisible and "likely"[22] divisible are not synonymous. While both terms are prospective, "potentially" encompasses more uncertainty in the object's future existence, while "likely" nearly acknowledges the object's future existence.[23] *Singh* did not consider the statute likely divisible, but merely remanded for the BIA to consider the statute in greater depth.[24] *Hanna*'s divisibility conclusion, on the basis of *Singh*, is therefore unjustified.[25] *Hanna* misconstrued *Singh*'s perspective on the statute and

15. *See id.* at 480 ("We can imagine a range of factual circumstances that would fall within the apprehension-portion of the statute but would plainly stretch the concept of a CIMT.").

16. *See id.*

17. *See id.* Unfortunately, the author was unable to find the BIA's decision on remand after *Singh*.

18. *See Hanna*, 740 F.3d at 392 (citing Wala v. Mukasey, 511 F.3d 102, 109 (2d Cir. 2007)).

19. *See id.* at 392–93.

20. *See id.* at 389–90, 392.

21. *See, e.g.*, *Potential*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/potential (last accessed Mar. 15, 2019) ("[E]xisting in possibility: capable of development into actuality."); *Potentially*, OXFORD DICTIONARIES, https://en.oxforddictionaries.com/definition/potentially (last accessed Mar. 15, 2019) ("With the capacity to develop or happen in the future."); *Potential*, CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/us/dictionary/english/potential (last accessed Mar. 15, 2019) ("[P]ossible but not yet achieved.").

22. *See, e.g.*, *Likely*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/likely (last accessed Mar. 15, 2019) ("(1) having a high probability of occurring or being true: very probable. (2) in all probability: probably."); *Likely*, OXFORD DICTIONARIES, https://en.oxforddictionaries.com/definition/likely (last accessed Mar. 15, 2019) ("(1) such as well might happen or be true; probable. (2) apparently suitable; promising."); *Likely*, CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/us/dictionary/english/likely (last accessed Mar. 15, 2019) ("(1) expected to happen: probable. (2) if something is likely, it will probably happen or is expected.").

23. *Compare Potentially supra* note 21, *with Likely, supra* note 22.

24. *See Singh*, 321 Fed. App'x at 480.

25. *See Hanna*, 740 F.3d at 390 ("We now recognize [MCL] § 750.82 as divisible, and as such, the statute encompasses non-CIMT offenses."); *see also id.* at 392 ("[MCL] § 750.82 is a divisible statute, encompassing offenses that are and are not CIMTs.").

thereby ballooned *Singh*'s significance and stretched the case beyond the statute's support.

Second, and more troublesome,[26] *Singh* purports to divide MCL § 750.82 into elements based on Michigan case law.[27] The crux of *Singh*'s analysis is the division of the statute into (1) "intent to injure," and (2) "intent to place the victim in apprehension of an immediate battery."[28] The first problem: *Singh* does not cite to any law for this distinction.[29]

Following this distinction, *Singh* mentions that "the Michigan Supreme Court explained that these two types of assault have different mental elements, noting that, at early common law, only the attempted-battery variety of assault was criminalized."[30] The second problem: *Singh* relies on a Michigan Supreme Court decision that analyzed MCL § 750.88 (robbery), *not* MCL § 750.82 (felonious assault).[31]

The two problems reveal that *Singh* failed to provide a solid legal foundation to determine whether MCL § 750.82 is a divisible statute. Thus, *Hanna*'s reliance on *Singh*'s inaccurate analysis, which serves as the basis for *Hernandez*'s holding, is legally flawed and must be remedied.

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26. *Hanna* mentions that *Singh* analyzed MCL § 750.82 "in detail." *Id.* at 389. Yet, *Singh* did nothing more than block quote the statute and deliver case law elements of the statute. *See Singh*, 321 Fed. App'x at 478. *Singh*'s analysis can hardly be considered detailed.

27. *See Singh*, 321 Fed. App'x at 478. Michigan case law clearly depicts the necessary elements of MCL § 750.82 to warrant a conviction. *See* People v. Lawton, 492 N.W.2d 810, 815 (Mich. Ct. App. 1992); People v. Wardlaw, 475 N.W.2d 387, 387 (Mich. Ct. App. 1991); People v. Robinson, 378 N.W.2d 551, 552 (Mich. Ct. App. 1985); People v. Smith, 371 N.W.2d 496, 501 (Mich. Ct. App. 1985); People v. Sheets, 360 N.W.2d 301, 303–04 (Mich. Ct. App. 1984); People v. Stevens, 360 N.W.2d 216, 217 (Mich. Ct. App. 1984); People v. Polk, 333 N.W.2d 499, 501 (Mich. Ct. App 1982); People v. McShan, 327 N.W.2d 509, 512 (Mich. Ct. App. 1983).

28. *Singh*, 321 Fed. App'x at 478.

29. *See id.*

30. *See id.* (citing People v. Reeves, 580 N.W.2d 433, 435 (Mich. 1998)).

31. *See Reeves*, 580 N.W.2d at 434 n.1. Some may argue that the definition of robbery may incorporate elements of a felonious assault. Assuming, *arguendo*, that this is true, *Reeves* held that either intent to injure or intent to place another in apprehension of immediate injury are sufficient to find assault. *See id.* at 438 ("[W]e confirm that an assailant's undisclosed inability to carry out threatened harm does not preclude a conviction of [assault with intent to rob], as long as the victim's apprehension of imminent injury is reasonable."). Considering the issue further, although in the context of U visas, the U.S. Citizenship & Immigration Services (USCIS) has analyzed whether an aggravated robbery is substantially similar to felonious assault. *See* 8 U.S.C. § 1101(a)(15)(U) (2014); *see also* 8 C.F.R. § 214.14(a)(9) (2018). Aggravated robberies are not substantially similar to felonious assaults. *See, e.g.*, Matter of M-V-C-, ID# 11780, at *5 (AAO Nov. 9, 2016) (Texas aggravated robbery is not substantially similar to felonious assault); Matter of N-L-P-, ID# 12474, at *5 (AAO Oct. 31, 2016) (Georgia robbery is not substantially similar to felonious assault); Matter of M-C-O-B-, ID# 11781, at *5 (AAO Oct. 31, 2016) (North Carolina aggravated robbery is not substantially similar to felonious assault); Matter of A-S-R-, ID# 16000, at *7 (AAO Mar. 11, 2016) (Minnesota aggravated robbery is not substantially similar to felonious assault). Although the USCIS cases are for illustrative purposes only, they indicate that more than mere imagination is necessary for a legally sound comparison of robbery and felonious assault.

III. THE SIXTH CIRCUIT SHOULD RECONSIDER ITS DECISION IN *HERNANDEZ V. WHITAKER* AND PROVIDE A LEGALLY SOUND EXPLANATION FOR CONCLUDING THAT MICHIGAN'S FELONIOUS ASSAULT STATUTE IS NOT A CIMT.

As discussed, *Hanna* both misconstrued *Singh*'s perspective on MCL § 750.82 and also relied on *Singh*'s inaccurate legal analysis. Because *Hanna* provides a flawed legal foundation for *Hernandez*, the Sixth Circuit should reconsider its decision in *Hernandez* and whether MCL § 750.82 is a CIMT. Any subsequent decision requires a new, legally sound analysis.

A CIMT "is a nebulous concept, referring generally to conduct that shocks the public conscience as being inherently base, vile, or depraved contrary to the rules of morality and the duties owed between people or society in general."[32] To qualify as a CIMT, an offense must involve reprehensible conduct committed with some form of scienter, e.g. recklessness, willfulness, knowledge, or specific intent.[33] Accordingly, the federal generic definition of a CIMT has two elements: (1) morally reprehensible and intrinsically immoral conduct, and (2) a culpable mental state.[34]

To determine whether a particular conviction involves moral turpitude, the court first engages in a categorical inquiry and looks to the inherent nature of the offense, as defined in the relevant statute, rather than the facts of

32. Matter of Danesh, 19 I. & N. Dec. 669, 670 (BIA 1988) (surveying terminological precedent since 1945); *see* Matter of Mendez, 27 I. & N. Dec. 219, 221 (BIA 2018); Matter of Ortega-Lopez, 27 I. & N. Dec. 382, 385 (BIA 2018); Matter of Sejas, 24 I. & N. Dec. 236, 237 (BIA 2007); Matter of Solon, 24 I. & N. Dec. 239, 240 (BIA 2007); Matter of Ajami, 22 I. & N. Dec. 949, 950 (BIA 1999); Matter of Perez-Contreras, 20 I. & N. Dec. 615, 617–18 (BIA 1992); *see also* Da Silva Neto v. Holder, 680 F.3d 25, 29 (1st Cir. 2012); Rodriguez v. Gonzales, 451 F.3d 60, 63 (2d Cir. 2006); Jean-Louis v. Att'y Gen. of U.S., 582 F.3d 462, 465 (3d Cir. 2009); Guevara-Solorzano v. Sessions, 891 F.3d 125, 135 (4th Cir. 2018); Villegas-Sarabia v. Sessions, 874 F.3d 871, 877–78 (5th Cir. 2017); Ruiz-Lopez v. Holder, 682 F.3d 513, 518–19 (6th Cir. 2012); Sanchez v. Holder, 757 F.3d 712, 715 (7th Cir. 2014); Alonzo v. Lynch, 821 F.3d 951, 958 (8th Cir. 2016); Mormolego-Campos v. Holder, 558 F.3d 903, 910 (9th Cir. 2009); Flores-Molina v. Sessions, 850 F.3d 1150, 1159 (10th Cir. 2017); Gelin v. U.S. Att'y Gen., 837 F.3d 1236, 1240 (11th Cir. 2016). For a historical presentation of the term, see Sara Salem, Note, *Should They Stay or Should They Go: Rethinking the Use of Crimes Involving Moral Turpitude in Immigration Law*, 70 FLA. L. REV. 225, 230–33 (2018).

33. *See* Matter of Leal, 26 I. & N. Dec. 20, 21 (BIA 2012); *Matter of Perez-Contreras*, 20 I. & N. Dec. at 618; *see also Ruiz-Lopez*, 682 F.3d at 519.

34. *See* Matter of E.E. Hernandez, 26 I. & N. Dec. 397, 398 (BIA 2014); *see also Ruiz-Lopez*, 682 F.3d at 519 (quoting Matter of Silva-Trevino, 24 I. & N. Dec. 687, 706 (A.G. 2008)).

the particular case.[35] To do so, the court employs the categorical approach[36] by comparing the statute of conviction to the generic definition of the offense.[37] Thus, a statute is categorically a CIMT when its elements are the same as, or narrower than, those of the generic definition.[38]

If the statute of conviction is not categorically a CIMT—i.e., it penalizes conduct outside of the generic definition's conduct—the court looks to whether the statute of conviction is divisible, "set[ting] out one or more elements of the offense in the alternative[,]"[39] at least one of which fits the generic definition of a CIMT.[40] The threshold question is whether the statute provides alternative *elements* that divide the statute into separate crimes, or only multiple, separate *means* for committing a single crime.[41] "Elements are the constituent parts of a crime's legal definition—the things the prosecution must prove to sustain a conviction."[42] Means, on the other hand, "are mere real-world things—extraneous to the crime's legal requirements. . . . They are 'circumstances' or 'events' having no 'legal effect or consequence'

35. *See* Moncrieffe v. Holder, 133 S. Ct. 1678, 1684 (2013); United States v. Southers, 866 F.3d 364, 366 (6th Cir. 2017) (internal quotation marks omitted); *see also* Matter of Silva-Trevino, 26 I. & N. Dec. 826 (BIA 2016); Matter of Zaragoza-Vaquero, 26 I. & N. Dec. 814, 815 (BIA 2016) ("[W]e ordinarily look to the nature of the crime, rather than the specific conduct that resulted in the conviction."); Matter of Tejwani, 24 I. & N. Dec. 97, 98 (BIA 2007) ("[W]e look to the elements of the respondent's statutory offense in order to determine whether the crime is one that necessarily involves moral turpitude, without considering the circumstances under which it was committed.")

36. The categorical approach is outlined in Taylor v. United States, 495 U.S. 575 (1990), expanded by Shepard v. United States, 544 U.S. 13, 19–21 (2005), and clarified by Descamps v. United States, 133 S. Ct. 2276 (2013). For a discussion on the Court's development of the categorical approach, and modified categorical approach, see generally Jacob A. Tosti, Note, *Immigration Law and the Categorical Approach in Massachusetts After* Mathis v. United States, 51 SUFFOLK U. L. REV. 729, 733–46 (2018); Zachary J. Weber, Mathis v. United States: *A Repeated Request for Revision of the Armed Career Criminal Act*, 85 U. CIN. L. REV. 1235, 1238–46 (2017).

37. *See Descamps*, 133 S. Ct. at 2281; *see also Moncrieffe*, 133 S. Ct. at 1684 ("By 'generic,' we mean the offense[] must be viewed in the abstract, to see whether the state statute shares the nature of the federal offense that serves as a point of comparison.").

38. *See Descamps*, 133 S. Ct. at 2281–82; *see also* Richardson v. United States, 890 F.3d 616, 620 (6th Cir. 2018).

39. *Descamps*, 133 S. Ct. at 2281.

40. *See* Mathis v. United States, 136 S. Ct. 2243, 2248 (2016); *Descamps*, 133 S. Ct. at 2281; *see also* United States v. Ritchey, 840 F.3d 310, 315–16 (6th Cir. 2016); United States v. Mitchell, 743 F.3d 1054, 1065 (6th Cir. 2014).

41. *See Mathis*, 136 S. Ct. at 2256; *see also Richardson*, 890 F.3d at 620; *Ritchey*, 840 F.3d at 318; United States v. Prater, 766 F.3d 501, 510 (6th Cir. 2014) ("Whether an offense is 'divisible' turns on its actual elements, . . . not on whether the state provides separate labels for different elements.").

42. *Mathis*, 136 S. Ct. at 2248 ("At a trial, they are what the jury must find beyond a reasonable doubt to convict the defendant, . . . and at a plea hearing, they are what the defendant necessarily admits when he pleads guilty.") (internal quotation marks and citations omitted).

. . . ."[43] Accordingly, if the statute does not categorically match the generic definition of a crime, and the statute is indivisible,[44] the convicting offense is not a CIMT.

A. MCL § 750.82 is Categorically a CIMT

The Michigan felonious assault statute states, in pertinent part:

> A person who assaults another person with a gun, revolver, pistol, knife, iron bar, club, brass knuckles, or other dangerous weapon without intending to commit murder or to inflict great bodily harm less than murder is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $2,000.00, or both.[45]

Three elements are required to convict a defendant of felonious assault: "(1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable fear or apprehension of an immediate battery."[46] Comparing the elements of the federal generic definition to the elements of Michigan's felonious assault, it is clear that assault with a dangerous weapon is morally reprehensible and intrinsically immoral conduct.[47] Moreover, because the statute requires specific intent for commission of the offense—either intent to harm or intent to place the victim in apprehension of immediate harm—the culpable mental state is also satisfied.[48] Thus, the natural reading of the statute warrants the conclusion that MCL § 750.82 is categorically a CIMT. It would be difficult to argue that intentionally holding a knife to a victim's neck would not, by societal standards, be a CIMT.[49]

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43. *Id.* ("In particular, they need neither be found by a jury nor admitted by a defendant.") (brackets omitted).

44. *See* United States v. Harris, 853 F.3d 318, 320 (6th Cir. 2017) ("When an offense of conviction does not list multiple elements in the alternative, it is not divisible.") (internal quotation marks omitted).

45. MICH. COMP. LAWS § 750.82 (2019).

46. *Lawton*, 492 N.W.2d at 815 (citations omitted). Although inappropriate for the categorical analysis, the jury instructions are illustrative for a curious reader. *See* Mich. Crim. JI 17.9, Assault With a Dangerous Weapon (2019).

47. *See Ruiz-Lopez*, 682 F.3d at 519.

48. *See id.* This is clearly different from a statute that includes "intentional" and "reckless" mental state in commission of an assault. *See* Tosti, *supra* note 36, at 748 (stating that "Massachusetts courts have established that the statute encompasses two 'separate aspects': intentional assault and battery, and reckless assault and battery"). Because neither the statute nor Michigan courts have established such divisibility for felonious assault, there is only one culpable state—intentional. *See Harris*, 853 F.3d at 321 ("[T]here is no way to commit [felonious assault] without intentionally attempting or threating physical force against another with a dangerous weapon.") (emphasis added).

49. The BIA has reiterated that the "nature of the crime is measured against the contemporary moral standards and may be susceptible to change based on prevailing views in society." Matter of Lopez-Meza, 22 I. & N. Dec. 1188, 1192 (BIA 1999) (citations omitted). Does *Hernandez* forge a societal view where a felonious assault is morally acceptable?

IV. CONCLUSION

From *Singh*'s imagination, to *Hanna*'s misconstruction, to *Hernandez*'s boldness, the Sixth Circuit has failed to provide a clear and legally sound analysis for holding MCL § 750.82 not a crime involving moral turpitude. Instead, the Sixth Circuit's logic in *Hernandez* appears to be clear: "Because We Said So."