

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JESUS GONZALEZ-GODINEZ,

Petitioner,

v.

TODD BLANCHE, Attorney
General,

Respondent.

No. 19-71322

Agency No.
A076-716-413

OPINION

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted January 12, 2026
Pasadena, California

Filed August 10, 2026

Before: Consuelo M. Callahan and Patrick J. Bumatay,
Circuit Judges, and Jed S. Rakoff, District Judge.*

Opinion by Judge Rakoff

* The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

SUMMARY**

Immigration

Denying Jesus Gonzalez-Godinez’s petition for review of a decision of the Board of Immigration Appeals, the panel held that Gonzalez’s conviction under Oregon Revised Statutes § 163.670 for “Using a Child in a Display of Sexually Explicit Content” was for a crime of “child abuse, child neglect, or child abandonment” that rendered him removable under 8 U.S.C. § 1227(a)(2)(E)(i).

Applying *Leon-Briviesca v. Blanche*, 179 F.4th 1180 (9th Cir. 2026), the panel concluded that Section § 163.670 is categorically a “crime of child abuse, child neglect, or child abandonment” because it has a *mens rea* of at least criminal negligence and an *actus reus* of placing a minor in a situation that is likely to produce harm.

The panel explained that Oregon courts have repeatedly interpreted Section 163.670 to require a *mens rea* of intent or knowledge because the legislature’s goal in enacting the statute was “to address conduct committed for the *purpose* of observation or visual recording.”

Addressing *actus reus*, the panel explained that the operative question was whether a violation of Section 163.670 categorically entails a likelihood of physical or emotional harm to a child. Gonzalez argued that Section 163.670 was not a categorical match with the generic federal definition because the Ninth Circuit held in *Menendez v.*

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Whitaker, 908 F.3d 467 (9th Cir. 2018) that a “materially narrower” California offense is not a crime of child abuse. The panel explained that none of the factors relevant to the Court’s decision in *Menendez*—a defendant’s knowledge of a victim’s age, the age differential between a victim and the defendant, and whether the defendant engaged in physical or constructive touching—bear on that inquiry. The panel also rejected Gonzalez’s arguments that it is possible to violate Section 163.670 without maltreating or otherwise harming a minor and that there is a realistic probability that Section 163.670 could reach consensual conduct between older minors.

COUNSEL

Octavian Jumanca (argued), Westlake Law PLLC, Seattle, Washington, for Petitioner.

Kiley L. Kane (argued) and Erica B. Miles, Senior Litigation Counsel; Office of Immigration Litigation; Joseph H. Hunt, Assistant Attorney General; Civil Division, United States Department of Justice, Washington, D.C.; for Respondent.

OPINION

RAKOFF, District Judge:

Petitioner Jesus Gonzalez-Godinez (“Gonzalez”) challenges an order of the Board of Immigration Appeals (“BIA”) dismissing his appeal of a decision by an Immigration Judge (“IJ”) to deny voluntary departure and to order him to be removed. Both the IJ and BIA concluded that the relief Gonzalez sought was barred by his conviction for violating Oregon Revised Statutes § 163.670, “Using a Child in a Display of Sexually Explicit Content” (“Section 163.670”). The IJ and BIA held that Gonzalez’s conviction was for a crime of “child abuse, child neglect, or child abandonment” and, therefore, rendered Gonzalez deportable under 8 U.S.C. § 1227(a)(2)(E)(i). Gonzalez contends that Section 163.670 is not a crime of child abuse because it is a mismatch with both the *mens rea* and *actus reus* of the generic federal definition of such a crime. We have jurisdiction under 8 U.S.C. § 1252(a). Our review is *de novo*. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) (holding that “Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority”). We deny Gonzalez’s petition because, in light of our analysis in *Leon-Briviesca v. Blanche*, 179 F.4th 1180 (9th Cir. 2026), Section 163.670 is categorically a crime of child abuse.

Gonzalez is a citizen of Mexico who entered the United States in 1988 and became a lawful permanent resident in 1998. In 2012, Gonzalez was arrested and indicted for numerous sex crimes, all concerning his conduct with a fifteen-year-old girl whom he met at church. Among the charges against Gonzalez were three violations of Section

163.670. On February 4, 2013, pursuant to a plea agreement, Gonzalez pleaded guilty to one of the Section 163.670 violations and was sentenced to seventy months' imprisonment. On July 10, 2018, the Department of Homeland Security issued Gonzalez a Notice to Appear ("NTA") alleging that he was removable from the United States on the bases that he had been convicted of both an aggravated felony and a crime of child abuse. Gonzalez admitted the NTA's factual allegations but contested removability. The IJ held that he was not removable for conviction of an aggravated felony but that he was removable for conviction of a crime of child abuse. Gonzalez timely filed an application for cancellation of removal, which the IJ denied. He then timely appealed the IJ's decision to the BIA, arguing principally that Section 163.670 is not a crime of child abuse. The BIA dismissed Gonzalez's appeal, finding him removable.

Our opinion in *Leon-Briviesca*, the lead case in a group of appeals that were consolidated for purposes of oral argument after the Supreme Court vacated our decision in *Diaz-Rodriguez v. Garland*, 55 F.4th 697 (9th Cir. 2022), sets forth the framework within which we analyze Gonzalez's petition. In brief, we apply the so-called "categorical approach" to determine whether Gonzalez's offense of conviction—not his actual conduct—is a crime of child abuse. *See Leon-Briviesca*, 179 F.4th at 1184–85. Such a crime must have a *mens rea* of at least criminal negligence and an *actus reus* of placing a minor in a situation that is likely to produce harm. *See id.* at 1191–96.

Gonzalez contends that both the *mens rea* and *actus reus* of Section 163.670 are a mismatch with the generic federal definition of a crime of child abuse. As to *mens rea*, Gonzalez argues that the statute does not specify a mental

state and that it is possible to violate Section 163.670 without being even criminally negligent. Gonzalez has abandoned some of his arguments in his supplemental briefing, but, in any event, they are all unavailing. Oregon courts have repeatedly interpreted Section 163.670 to require a *mens rea* of intent or knowledge since the legislature’s goal in enacting the statute was “to address conduct committed for the *purpose* of observation or visual recording.” *State v. Clay*, 301 Or. App. 599, 606 (2019) (emphasis added); *see also State v. Propp*, 345 Or. App. 376, 401 (2025). Indeed, the statute requires that a defendant’s actions cause a child to “participate or engage in sexually explicit conduct *for any person to observe or to record in a visual recording*,” Or. Rev. Stat. § 163.670(1) (2013) (emphasis added), and the word *for* is here “used as a function word to indicate purpose” or “an intended goal” of conduct. *Clay*, 301 Or. App. at 606. This requirement is why a violation of Section 163.670 constitutes “one of the most serious crimes in Oregon.” *Id.*

As to *actus reus*, Gonzalez argues that Section 163.670 is not a categorical match with the generic federal definition because the Ninth Circuit has held that a “materially narrower” California offense is not a crime of child abuse. *See Menendez v. Whitaker*, 908 F.3d 467 (9th Cir. 2018). Moreover, Gonzalez reasons, it is possible to violate Section 163.670 without maltreating or otherwise harming a minor.

As to Gonzalez’s first argument, his discussion of *Menendez* is inapposite. The operative question in this case is whether the *actus reus* of a Section 163.670 violation matches the *actus reus* of the generic federal definition of a crime of child abuse. To resolve that question, we must determine whether a violation of Section 163.670 categorically entails a likelihood of physical or emotional

harm to a child. *See Leon-Briviesca*, 179 F.4th at 1195–96. And none of the factors relevant to the Court’s decision in *Menendez*—a defendant’s knowledge of a victim’s age, the age differential between a victim and the defendant, and whether the defendant engaged in physical or constructive touching—bear on that inquiry. *See Menendez*, 908 F.3d at 474–75.

As to whether Section 163.670 can be violated without risking harm or maltreatment of a child, Gonzalez relies on Oregon cases that, he says, involved purportedly “innocuous or nonharmful conduct.” We disagree. Gonzalez’s carefully sanitized descriptions of these cases belie the serious conduct that they involved. One defendant, twenty-five years old, initiated a sexual relationship with a thirteen-year-old and asked her to send him a “naughty” photograph of herself, *State v. Hunt*, 270 Or. App. 206, 208 (2015); another defendant allowed his fifteen-year-old daughter to be physically and sexually abused while he was present in the same room, *State v. Porter*, 241 Or. App. 26, 28 (2011); and a third involved a young child who was photographed standing near, and touching, adults “engaged in sexual activity,” *State v. Richardson*, 261 Or. App. 95, 97 (2014). The conduct in these cases plainly created a high risk of physical or mental harm to the children involved. To be sure, at the time of Gonzalez’s conviction, Oregon did not require that a defendant’s conduct be objectively lewd, only that the conduct be for the purpose of the defendant’s sexual gratification. *See State v. Parra-Sanchez*, 324 Or. App. 712, 733–36 (2023) (en banc) (adopting objective standard). But a conviction under 163.70 still required the “actual or simulated lewd exhibition of sexual or other intimate parts.” *Id.* at 720. Regardless of whether courts applied a subjective or objective approach to determining the meaning of “lewd

exhibition,” the statute still required conduct that created a significant risk of physical or mental harm.

Finally, Gonzalez hypothesizes that Section 163.670 could reach consensual conduct between older minors. *See State v. Carey-Martin*, 293 Or. App. 611, 638 (2018) (en banc). But neither Gonzalez nor the Oregon courts have identified any actual prosecutions for such conduct, and accordingly, Gonzalez has not shown a “realistic probability” that Oregon would prosecute such conduct under Section 163.670. *See Moncrieffe v. Holder*, 569 U.S. 184, 191 (2013).

For all these reasons, Section 163.670 is a categorical match with the generic federal definition of a crime of child abuse, and the BIA properly dismissed Gonzalez’s appeal of the IJ’s decision ordering him removed.¹ Gonzalez’s petition for review of the BIA’s order is **DENIED**.

¹ The Attorney General argues that certain arguments of Gonzalez’s are unexhausted, waived, or both because he failed to present them to the BIA or did not raise them in his opening brief. That is incorrect, however, because all the arguments at issue are simply illustrations of Gonzalez’s long-running “general argument” that Section 288.2(b) is overbroad in comparison to the generic definition. *See, e.g., Bare v. Barr*, 975 F.3d 952, 960 (9th Cir. 2020).