

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEX ANTON KNIGHT, AKA Alex Knight,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 16-73797

Agency No. A077-303-412

MEMORANDUM*

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

Argued and Submitted August 14, 2019
Pasadena, California

Before: SCHROEDER and GRABER, Circuit Judges, and M. WATSON,**
District Judge.

Alex Anton Knight, a native and citizen of Belize, petitions for review of his order of removal. He contends that his conviction under California Vehicle Code

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Michael H. Watson, United States District Judge for the Southern District of Ohio, sitting by designation.

section 10851(a), Unlawful Taking or Driving of a Vehicle, does not qualify as an aggravated theft offense supporting his removal.

We have held that Section 10851(a) is not a categorical match for an aggravated felony theft offense under 8 U.S.C. § 1101(a)(43)(G) because Section 10851(a) criminalizes accessories after the fact, not just principal actors. *See United States v. Vidal*, 504 F.3d 1072, 1086 (9th Cir. 2007) (en banc), *abrogated on other grounds as recognized in Cardozo-Arias v. Holder*, 495 F. App'x 790, 792 n.1 (9th Cir. 2012). We have also held that the statute is divisible in its treatment of accessories after the fact. *See Duenas-Alvarez v. Holder*, 733 F.3d 812, 815 (9th Cir. 2013). Petitioner asks us to look to the record of conviction under a modified categorical analysis to determine whether the record unequivocally shows that he was convicted as a principal actor.

In arguing that the record is ambiguous on this point, Petitioner relies on our decision in *United States v. Arriaga-Pinon*, 852 F.3d 1195 (9th Cir. 2017). There, because the defendant had pled to driving *or* taking the car and there was no factual basis for the plea, we held that there was uncertainty in the record as to whether he was convicted as a principal or an accessory. *Id.* at 1200. Here, however, there is no doubt that Petitioner was convicted as a principal. Petitioner pled to an unambiguous charge that he took *and* drove the vehicle at issue without

the owner's consent, and Petitioner provided a factual basis for his plea. Because his record of conviction shows unambiguously that he was convicted of the generically defined crime of aggravated theft, petitioner's conviction provides a proper basis for his removal.

Petition DENIED.