

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-1379

GERRY DE JESUS MARTE-HERNANDEZ,
Petitioner

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

On Petition for Review of an Order of the
Board of Immigration Appeals
(Agency No. A087-149-810)
Immigration Judge: William McDermott

Submitted Pursuant to Third Circuit LAR 34.1(a)
October 5, 2026
Before: BIBAS, CHUNG, and BOVE, *Circuit Judges*

(Opinion filed: October 6, 2026)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Gerry De Jesus Marte-Hernandez petitions for review of the final order of removal entered by the Board of Immigration Appeals (“Board”) that dismissed his appeal from the decision of an Immigration Judge (“IJ”). We will deny the petition for review.

I.

Marte-Hernandez, a native and citizen of the Dominican Republic, was a lawful permanent resident of the United States. After being indicted in the United States District Court for the Southern District of New York, he entered a guilty plea on four charges, including conspiracy to commit wire fraud. But Marte-Hernandez did not appear at sentencing and was deemed a fugitive.

In December 2022, over nine years after his guilty plea, Marte-Hernandez was paroled into the United States for his criminal prosecution. The District Court entered his sentence of imprisonment in November 2023. The Government charged Marte-Hernandez as an inadmissible arriving alien who was subject to removal for being convicted of a crime involving moral turpitude, or an attempt or conspiracy to commit such a crime. *See* 8 U.S.C. § 1182(a)(2)(A)(i)(I).

When Marte-Hernandez appeared before the IJ at the master-calendar hearing on August 5, 2024, he declined to answer questions without an attorney. Because he would not indicate whether he had any fear of returning to the Dominican Republic, the IJ did not provide him with an asylum application. Marte-Hernandez was provided a list of pro bono legal service providers, and the IJ continued the matter to provide him time to obtain counsel, advising him that if he failed to obtain counsel, he would be required to proceed on his own. The next hearing was then continued due to scheduling issues.

Meanwhile, Marte-Hernandez moved to terminate his removal proceedings, arguing that the Superseding Notice to Appear was defective because it did not provide him with adequate time to retain counsel before the initial hearing. He also requested a written ruling on the matter.

The IJ orally denied the motion on October 7, 2024, finding that the Superseding Notice to Appear was compliant. At the same hearing, the IJ found that Marte-Hernandez had been given sufficient time to find a lawyer and would be required to proceed pro se. Because Marte-Hernandez continued to decline to answer any questions, the IJ admitted the Government's evidence without objection. The IJ again asked Marte-Hernandez whether he feared return to the Dominican Republic, and Marte-Hernandez responded, "I'm not afraid." The IJ, having found that Marte-Hernandez was convicted of a crime of moral turpitude, ordered him removed.

Marte-Hernandez filed three notices of appeal to the Board, along with supplemental briefing, challenging the IJ's denial of his motion to terminate the proceedings, the denial of his motion for a ruling by written order, and the order of removal. After the Board issued a briefing notice, Marte-Hernandez requested an extension of time to file his brief, which the Board denied as untimely.

The Board, noting that it had considered all of Marte-Hernandez's appellate filings, dismissed the appeal. It rejected Marte-Hernandez's challenge to the Notice to Appear and agreed that he was removable as charged. Marte-Hernandez petitioned for review.

II.

Generally, we have jurisdiction to review final orders of removal in immigration proceedings. *See* 8 U.S.C. § 1252(a)(1). But insofar as Marte-Hernandez was convicted of conspiracy to commit a crime involving moral turpitude, our jurisdiction is limited to reviewing colorable constitutional claims and questions of law. *See* 8 U.S.C. § 1252(a)(2)(C), (D); *Francisco-Lopez v. Att’y Gen.*, 970 F.3d 431, 435 n.1 (3d Cir. 2020); *Jarbough v. Att’y Gen.*, 483 F.3d 184, 189 (3d Cir. 2007). We review these claims and questions de novo. *See Myrie v. Att’y Gen.*, 855 F.3d 509, 515 (3d Cir. 2017). And we will decide this petition for review “only on the administrative record on which the order of removal is based.” 8 U.S.C. § 1252(b)(4)(A).

III.

The Government correctly regarded Marte-Hernandez as an applicant for admission. Even though he was previously admitted to the United States as a lawful permanent resident and had not yet been sentenced for his crimes, he could be regarded as seeking admission because he had pleaded guilty to conspiracy to commit a crime involving moral turpitude. *See Blanche v. Lau*, 609 U.S. ___, 146 S. Ct. 1981, 1990 (2026) (citations and emphasis omitted) (explaining that “the Government may regard a lawful permanent resident as seeking admission as soon as he ‘committed a’ crime involving moral turpitude”); *see also Chiao Fang Ku v. Att’y Gen.*, 912 F.3d 133, 143 (3d Cir. 2019) (recognizing “the long-held tenet that fraud crimes—including wire fraud—are crimes involving moral turpitude”). And, at the removal hearing, by way of Marte-Hernandez’s guilty plea and subsequent judgment of conviction and sentence, the Government established by “clear and convincing evidence that, before

[Marte-Hernandez] attempted to reenter the country, he had committed the crime in question.” *Lau*, 146 S. Ct. at 1989.¹ Marte-Hernandez was removable as charged.

Contrary to Marte-Hernandez’s assertions, he was not denied the right to counsel. *See Freza v. Att’y Gen.*, 49 F.4th 293, 298–99 (3d Cir. 2022). As the Board explained, the IJ continued the proceedings after the initial hearing so that Marte-Hernandez could obtain counsel. The IJ provided Marte-Hernandez with a list of pro bono legal services and warned him that he would be required to proceed pro se if he did not secure a lawyer after having sufficient time. *See Leslie v. Att’y Gen.*, 611 F.3d 171, 180–82 (3d Cir. 2010). And the IJ did not require him to proceed pro se until two months later, at the third hearing. Marte-Hernandez was given ample opportunity to obtain counsel and did not do so. *Cf. Ponce-Leiva v. Ashcroft*, 331 F.3d 369, 376 (3d Cir. 2003). Nor did he request a continuance for additional time to obtain counsel or show that he made any efforts to secure counsel.²

¹ Marte-Hernandez’s argument that he could not be ordered removed without a finding that he committed a crime involving moral turpitude within five years after his admission is without merit. The Government can charge an applicant for admission as inadmissible if he has been convicted of a crime involving moral turpitude “at any time.” *See Lau*, 146 S. Ct. at 1986 (comparing 8 U.S.C. § 1182(a) (applicants for admission) with 8 U.S.C. § 1227(a) (already admitted aliens)).

² Marte-Hernandez’s related arguments regarding the Superseding Notice to Appear also fail. He claims, for example, that the Superseding Notice to Appear was non-compliant because it was served within ten days of his initial hearing, and thus that the IJ lacked jurisdiction over the matter. *See* 8 U.S.C. § 1229(b)(1) (providing that the first hearing date “shall not be scheduled earlier than 10 days after the service of the notice to appear”). Even if we assume error, a deficient or defective Notice to Appear does not deprive an IJ of jurisdiction over immigration proceedings. *See Nkomo v. Att’y Gen.*, 930 F.3d 129, 133 (3d Cir. 2019).

Marte-Hernandez also raises arguments that he failed to exhaust before the Board: that he was denied an opportunity to object to the Government’s evidence, and that the IJ prevented him from seeking asylum or a waiver under 8 U.S.C. § 1182(h). We must enforce exhaustion where, like here, the Government properly raised the issue. *See Aguilar v. Att’y Gen.*, 107 F.4th 164, 168–69 (3d Cir. 2024). So we decline to consider these arguments.³

IV.

We have considered Marte-Hernandez’s remaining arguments and conclude that they do not warrant relief. Accordingly, we will deny the petition for review.

³ In any event, we note that the IJ informed Marte-Hernandez of his right to inspect the Government’s evidence, and that Marte-Hernandez was present when the IJ marked and discussed the Government’s evidence. Marte-Hernandez declined to object to its admissibility, and more specifically, he made no objection about not having received an opportunity to examine the evidence. Marte-Hernandez also told the IJ that he did not fear return to the Dominican Republic, and he declined to answer other questions about his removability.