Ann Arbor Attorney Mike Carlin represents Juan Esquivel-Quintana in his challenge to his deportation order. The U.S. Supreme Court is scheduled to hear the case on Monday, Feb. 27. Here's a transcript of Carlin's conversation with WDET's Sandra Svoboda:

**Svoboda:** What's at stake in this case?

**Carlin:** What's at stake for him is whether or not he will be allowed to return to the United States as a permanent resident, which he always was in the United States. I think what's at stake on a larger level is the future of cases similar to Juan's for other potential non-citizens who may get caught up in immigration courts and federal courts.

**Svoboda:** Part of what's at stake here is Esquivel-Quintana was convicted of a crime in California under a law there that doesn't necessarily apply in other states. Is the problem how that's comporting with immigration law?

**Carlin:** Yes. You could say that. This case in federal court, which is now at the Supreme Court, is kind of what we refer to as "crimmigration." That is kind of the intersection of criminal law with immigration law. Each of those things in themselves is complicated, and then the intersection is a bit more complicated. He was convicted under a California state crime. The question is what are the immigration or deportation consequences of that conviction?

**Svoboda:** Take us through the background of the case. What happened with him?

**Carlin:** Juan Esquivel-Quintana first entered the United States when he was 12 years old as a permanent resident. I think it's important to point out that he never spent a day in the United States unlawfully. When he first entered, he entered with a valid visa, became a permanent resident immediately based on a family petition. He was in California. When he was 20 years old, he had a girlfriend who was 16.They had a consensual sexual relationship. I want to be clear that there was absolutely no force involved. It was voluntary on both sides. It turns out that in California, sex with a person who is under age 18 and not your spouse, that is unlawful if the difference in age between that person and the older person is more than three years. So the facts are that he did engage in consensual sex with his girlfriend, she was under 18, he was more than three years older. He was in California at that time, he got convicted. He served a short jail term, was sentenced to some probation as well. While he was in California, the US immigration officials did not take any action against him and that's largely because a 9th Circuit decision, the 9th Circuit covering California, a decision that had been made even before Juan Esquivel-Quintana ever engaged in anything with his girlfriend, the 9th Circuit had ruled that a conviction under that exact same statute that Juan was convicted under, the 9th Circuit said that does not have any immigration or deportation consequences. So the 9th Circuit was able to supersede or overrule any other immigration court ruling as long as a person is in the 9th Circuit.

**Svoboda:** But then he moved to Michigan.

**Carlin:** That's exactly right. Juan was not aware – and this is well before I ever met him – he was not aware that if he moved out of the 9th Circuit he was making himself vulnerable. He did move to Michigan to be with some family members: his mother, father, brothers and sisters all in Michigan. He moved to Michigan to be near them. Not too long after he moved to Michigan he

was encountered by US immigration officials who arrested him, detained him and charged him in immigration court as having been convicted of a crime that in their view was this aggravated felony under federal immigration law.

**Svoboda:** What could be the outcome from the Supreme Court justices and the impact and effect off their decision?

**Carlin:** In one way, the Supreme Court is faced with this phrase in the federal immigration law that is called "sexual abuse of a minor." The Supreme Court could issue a decision that would serve to provide a bit of a definition of what that means at least in certain contexts. What we're arguing is that although we're not proposed to define exactly what sexual abuse of a minor means in all cases, our argument is that in our case, our client's conviction is clearly not sexual abuse of a minor. If I could I could give a little more context for that. Our client was convicted in California of a statute that makes the conduct unlawful. We're not contesting that. We don't have a problem with that. The situation is this: California is one of about seven states in the United States which sets the age of consent for sexual intercourse at age 18. In other words if you're under 18, it's unlawful. All the other states set the age of consent at either 17 or 16 and more than 30 set it at 16. So basically 43 states and the District of Columbia and federal law all would have the conduct that my client engaged in be perfectly legal. He was convicted of having consensual sexual relations with a person under 18 and in 43 states and the District of Columbia and federal law, that's perfectly legal. Our main argument is a conviction for conduct that is perfectly legal under that large majority of jurisdictions in the United States, it just can't be an aggravated felony under the immigration law. There's a very important Supreme Court case from 1990 that's called Taylor v. the United States in which the Supreme Court said that when you're faced with a federal statute that's referring to a state criminal statue, there needs to be some uniform definition of what the statute means because it's not fair if Juan happened to engage in this relationship with his girlfriend in Michigan, for example, well, the age of consent in Michigan is 16, their conduct would have been perfectly lawful and no problems at all, not in any court at all. The same is true in a total of 43 states and the District of Columbia and under federal law. There's a federal law called sexual abuse of a minor or ward. That statute sets the age of consent at 16. So again, my client's conduct would have been perfectly legal. Our main argument is that under this important Supreme Court case called Taylor v. United States, this conduct can not be considered sexual abuse of a minor and it's not an aggravated felony.

**Svoboda:** What's the government's main argument?

**Carlin:** The government, quite honestly, has shifted their argument slightly or maybe not so slightly. At the Board of Immigration Appeals, the board, I think they were honestly grappling with the case and struggling with it. They ended up saying that in purposes of consensual sex between people of ages approximately 16 or 17, they said, "look, not every one of those cases is going to be 'sexual abuse of a minor.'" They said there needs to be a meaningful age difference between the younger person and the older person. They declined to indicate what the age difference is but they said, "In our case, three years is good enough." So they said it is sexual abuse of a minor in our case.

Before the 6th Circuit, the federal government basically argued the Board of Immigration Appeals is entitled to deference because they are the experts in immigration law. We argued the Board of Immigration Appeals is not due deference. It's under a famous case called Chevron v. the Natural Resources Defense Council. By a vote of 2-1 the 6th Circuit agreed with the government.

In the government's brief before the Supreme Court, the government kind of shifts course as it and says that by the plain language of the phrase "sexual abuse of a minor," those words would sweep in any conduct, any conduct of any sort of sexual nature at all involving any person who's under 18. So according to the government, it doesn't seem to even matter whether there's an age difference or not. There are certain states under which consensual sexual intercourse between two 17 year olds could be considered a crime, and I think what the federal government seems to be saying is that even that conduct, if one of those persons is a non-citizens, that would be sexual abuse of a minor even though they would both be for example 17 years old. We believe that in our view, that's an overreach, and we think that's not what the law really means. The U.S. government says well, if we're going back to what the Board of Immigration Appeals said, then the Board of Immigration Appeals is due the deference under Chevron v. Natural Resources Defense Council.

**Svoboda:** You mentioned that this case represents "crimmigration," the intersection of criminal law and immigration law. What are some of the other big issues in "crimmigration" now that we see in this country?

**Carlin:** Many "crimmigration" cases do focus on whether or not a conviction under a state statute is an aggravated felony. In our case, we've talked about sexual abuse of a minor. That is one phrase that is in a long list of crimes, all of which are listed as aggravated felonies. You could, for example, if you're a non-citizen and you're engaged in some kind of financial transaction that's viewed as fraudulent, if the dollar amount is more than $10,000, that could be considered an aggravated felony. There are many other crimes that are listed on the aggravated felony statute. Sexual abuse of a minor is one of them. Crimes of violence, for example, that's another sort of phrase that's in the aggravated felony statute that has been subject to a lot of litigation in recent years on "What does that phrase mean?"

Another area of "crimmigration" law that's hotly contested is whether a crime, a so-called crime involved moral turpitude. That is a legal term that's been around in criminal law for many, many years, perhaps even centuries. But it also gets very murky about whether or not any particular crime is a crime involving moral turpitude or not. There are many cases in what we refer to as "crimmigration" that would be focusing on an argument about that as well.