

Crim-Imm Case Law Updates 2025¹ **February 27, 2026**

The Board of Immigration Appeals (BIA or Board), the U.S. Courts of Appeals, and the Supreme Court have issued many decisions in the past year that implicate the rights of noncitizens. This resource is designed to help immigration practitioners familiar with the categorical approach stay current on significant case law developments over the past year at the intersection of immigration and criminal law. This resource begins with an overview of notable case law developments before the BIA, the U.S. Courts of Appeals, and the Supreme Court. This is followed by case summaries of all published BIA decisions addressing this area of law in 2025, along with a curated list of case summaries from the U.S. Courts of Appeals. The case law from the U.S. Courts of Appeals focuses primarily on decisions analyzing the categorical approach and the generic definitions underlying crime-based grounds of inadmissibility and deportability.

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I. Notable Developments Before the BIA, the U.S. Courts of Appeals, and the Supreme Court

A. *Crimes of Violence: Supreme Court Holds that Intentional Bodily Injury by Omission Qualifies as “Use of Physical Force”*

In *Delligatti v. United States*, 604 U.S. 423 (2025), the Supreme Court held that the “use of physical force” for purposes of the definition of a crime of violence under 18 U.S.C. § 924(c)(3)(A) includes intentionally or knowingly causing physical harm, even when the injury results from an act of omission. The case is highly relevant to immigration practitioners because the definition of a crime of violence under 18 U.S.C. § 924(c)(3)(A) is identical to the definition of a crime of violence under 18 U.S.C. § 16(a), which is incorporated into the aggravated felony crime of violence ground at 8 U.S.C. § 1101(a)(43)(F) and the crime of domestic violence deportability ground at 8 U.S.C. § 1227(a)(2)(E)(i).

The Court explained that the phrase “against the person or property of another” present in both 18 U.S.C. § 16(a) and § 924(c)(3)(A) requires at most that another person be “the conscious object” of the force, a term adopted by the Court’s plurality opinion in *Borden v. United States*, 593 U.S. 420, 430. The Court reasoned that whenever an individual intentionally causes bodily harm to another, even by omission, the victim is “necessarily the conscious object of physical force.” In holding that purposeful inaction can constitute a “crime of violence,” the Court adopted the view previously embraced by the vast majority of courts of appeals. The main outlier had been the Third Circuit, *see United States v. Mayo*, 901 F.3d 218 (3d Cir. 2018).

Impact on Noncitizens: The decision limits crime of violence omission-based overbreadth arguments by noncitizens whose statute of conviction could be committed through a failure to act provided the statute requires knowingly or intentionally causing physical harm. The case is especially relevant to Third Circuit practitioners, where helpful case law has been overturned.

B. *Growing Support for the “Time of Conviction” Rule for Controlled Substance Categorical Analysis*

The BIA, the Eighth, and First Circuits have joined the Second, Third, Ninth, and Eleventh Circuits in adopting a “time of conviction” rule for determining whether a state controlled substance offense is a categorical match with federal law.² Under this rule, the categorical analysis requires a comparison of state and federal law as they existed at the time the conviction occurred rather than the time of removal proceedings.³

² *See Doe v. Sessions*, 886 F.3d 203, 208-09 (2d Cir. 2018); *Martinez v. Att’y Gen.*, 906 F.3d 281, 287 (3d Cir. 2018); *Medina-Rodriguez v. Barr*, 979 F.3d 738, 749 (9th Cir. 2020); *Gordon v. U.S. Att’y Gen.*, 962 F.3d 1344, 1351 n.4 (11th Cir. 2020).

³ The Supreme Court recently adopted a “time of conviction” rule in the context of controlled substance-based sentencing enhancements under the Armed Career Criminal Act (ACCA), which like the INA incorporates Controlled Substances Act (CSA) drug definitions. *See Brown v. United States*, 602 U.S. 101 (2024).

In *Matter of Jonalson Dor*, 29 I&N Dec. 20 (BIA 2025), the Board rejected the respondent’s argument that his 2018 Massachusetts conviction for possession of marijuana was overbroad. The respondent had argued that because the federal definition of marijuana was amended to exclude hemp after his conviction, the state statute was rendered overbroad compared to the current federal definition at the time of his removal. The BIA disagreed, holding that the comparison must be fixed to the date of conviction. The First Circuit affirmed that decision in *Dor v. Bondi*, 161 F.4th 1 (1st Cir. 2025). Similarly, the Eighth Circuit, in *Salinas v. Bondi*, 131 F.4th 840 (8th Cir. 2025), also adopted the “time of conviction” rule in the context of a North Dakota marijuana offense. These decisions asserted that a “time of conviction” rule is more consistent with the categorical approach’s goals of efficiency and predictability, particularly for noncitizens and their counsel when assessing the immigration risks of pleas.

Impact on Noncitizens: The “time of conviction” rule locks in the controlled-substance categorical analysis to the legal landscape at the time of the plea/conviction. As a result, post-conviction federal reforms that narrow or deschedule substances generally will not provide a new overbreadth argument in removal proceedings, though the converse is also true: DHS cannot use later federal expansions to establish removability based on older convictions that were not a categorical match at the time of the conviction.

C. BIA Mandates Realistic Probability Test Despite Textual Mismatch in Chemical Isomer Cases

In recent years, noncitizens have had some success challenging controlled substance-based removals by identifying technical overbreadth in state laws that define a particular controlled substance to include chemical isomers not covered by federal law. In several circuits, this textual mismatch between the state definition of a drug and the federal definition has been sufficient to demonstrate no categorical match.⁴

In *Matter of Felix-Figueroa*, 29 I&N Dec. 157 (BIA 2025), however, the BIA held that when a respondent asserts such arguments, an Immigration Judge is required to apply the realistic probability test. The Board also held that, in such cases, the respondent has the burden to show that the state actually prosecutes the specific substances or isomers falling outside the Federal schedule once DHS establishes the existence of a state drug conviction by clear and convincing evidence. The BIA acknowledged that its holding is not applicable in the Second, Seventh, and Eighth Circuits where there is contrary circuit law. Other Circuits have cast doubt on this approach, but have not ruled in cases related to isomers specifically. The Board does not fully grapple with the fact that the vast majority of circuits have adopted some version of the “express language” rule, under which the realistic probability test is unnecessary where the statutory text is plainly overbroad,⁵ although it does point to two cases in the Ninth and Eleventh

⁴ See *United States v. Minter*, 80 F.4th 406 (2d. Cir. 2023) (cocaine under New York law); *Aguirre-Zuniga v. Garland*, 37 F.4th 446 (7th Cir. 2022) (methamphetamine under Indiana law); *United States v. Myers*, 56 F.4th 595 (8th Cir. 2022) (cocaine under Missouri law). *But see Chamu v. U.S. Att’y Gen.*, 23 F.4th 1325 (11th Cir. 2022); *Alexis v. Barr*, 960 F.3d 722 (5th Cir. 2020).

⁵ See *Swaby v. Yates*, 847 F.3d 62, 66 (1st Cir. 2017) (holding that the realistic probability test “has no relevance” where “[t]he state crime at issue clearly does apply more broadly than the federally defined offense”); *Hylton v. Sessions*, 897 F.3d 57 (2d Cir. 2018) (“The realistic probability test is obviated by the wording of the state statute, which on its face extends to conduct beyond the definition of the corresponding federal offense”); *Singh v. Attorney*

Circuits which suggest that a textual mismatch alone may not suffice in certain controlled-substance mismatch cases.⁶

Impact on Noncitizens: Outside the Second, Seventh, and Eighth Circuits, *Felix-Figueroa* makes isomer-based overbreadth challenges harder by requiring a realistic probability showing even where the statute’s text appears facially broader than federal law. Whether other circuits that apply an “express language” rule (i.e., treating facial statutory overbreadth as sufficient without a realistic probability showing) will accept this requirement in the isomer context remains largely untested. Crucially, on its face, the holding of *Felix-Figueroa* is applicable only to cases involving overbreadth arguments based on differences in chemical definitions of a controlled substance.

D. Circuit Courts’ Post-Loper Bright Analysis Conforming to Prior Precedent

In *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the Supreme Court overturned *Chevron* deference, which had required federal courts to defer to the BIA’s reasonable interpretations of the INA. As a result, several crim-imm cases were vacated and remanded for reconsideration.

So far, however, the practical impact in the crime-based removal context has been limited because courts have largely reaffirmed pre-existing interpretations of conviction-based removal grounds based on statutory stare decisis and their own independent analysis.⁷ In *Garcia Pinach v.*

General, 839 F.3d 273, 286 n.10 (3d Cir. 2016); *Salmoran v. Att’y Gen. United States*, 909 F.3d 73, 81 (3d Cir. 2018) (“[W]here the elements of the crime of conviction are not the same as the elements of the generic federal offense...we believe the ‘realistic probability’ language (or, the ‘realistic probability’ inquiry) of *Moncrieffe* is simply not meant to apply.”) (internal quotation marks and citation omitted); *Gordon v. Barr*, 965 F.3d 252, 261 (4th Cir. 2020) (holding that the categorical approach “does not require a petitioner to ‘find a case’ in which the state successfully prosecuted a defendant for the overbroad conduct when, as here, the language of a statute unambiguously is broader than the federal offense under comparison.”); *United States v. Camp*, 903 F.3d 594, 602 (6th Cir. 2018) (citing prior unpublished decision for proposition that “where the meaning of the statute is plain, the defendant need not provide a case to demonstrate a realistic probability that the statute is broader than the generic offense”); *Aguirre-Zuniga v. Garland*, 37 F.4th 446, 450 (7th Cir. 2022) (“If the statute is overbroad on its face under the categorical approach, the inquiry ends. After applying the categorical approach, if the court determines that the statute is ambiguous or has indeterminate reach, only then will the court turn to the realistic probability test.”); *Gonzalez v. Wilkinson*, 990 F.3d 654, 660 (8th Cir. 2021) (explaining that “when the statute’s reach is clear on its face, it takes no ‘legal imagination’ or ‘improbable hypotheticals’ to understand how it may be applied and to determine whether it covers conduct an analogous federal statute does not.”); *Lopez-Aguilar v. Barr*, 948 F.3d 1143, 1147 (9th Cir. 2020) (explaining that “a state statute expressly defin[ing] a crime more broadly than the generic offense” demonstrates realistic probability and that “as long as the application of the statute’s express text in the nongeneric manner is not a logical impossibility, the relative likelihood of application to nongeneric conduct is immaterial.”); *United States v. Cantu*, 964 F.3d 924, 934 (10th Cir. 2020) (“[A] defendant need not come forward with instances of actual prosecution when the ‘plain language’ of the statute proscribes the conduct at issue.”); *Said v. U.S. Att’y Gen.*, 28 F.4th 1328, 1332 (11th Cir. 2022) (noting that “an offender need not produce a sample prosecution when the statutory language itself, rather than the application of legal imagination to that language, creates the realistic probability that a state would apply the statute to conduct beyond the generic definition.”) (internal quotation marks and citation omitted).

⁶ See *United States v. Rodriguez-Gamboa*, 972 F.3d 1148 (9th Cir. 2020); *Chamu v. United States Attorney General*, 23 F.4th 1325 (11th Cir. 2022).

⁷ In 2024, however, the Eighth Circuit rejected the BIA’s interpretation of the meaning of the rape aggravated felony ground post-*Loper Bright*, referring to deference to the BIA as a “relic of the past” and echoing the Supreme Court’s

Bondi, 147 F.4th 117 (2d Cir. 2025), the Second Circuit declined to revisit its precedent defining aggravated felony “sexual abuse of a minor,” emphasizing statutory stare decisis and confirming that its prior interpretation remained correct under an independent analysis. In *Sandoval Argueta v. Bondi*, 137 F.4th 265 (5th Cir. 2025), the Fifth Circuit similarly reaffirmed its interpretation of the crime of child abuse removal ground based on its own reading of the statute rather than deference to the BIA. Following a Supreme Court vacatur grounded in *Loper Bright*, the Fourth Circuit in *Solis-Flores v. Bondi*, 159 F.4th 205 (4th Cir. 2025), likewise concluded through de novo statutory interpretation that receipt of stolen property under Virginia law constitutes a crime involving moral turpitude.

While courts have generally been reaffirming pre-*Loper Bright* precedent in this area, there has not been a consistent approach on the precise rationale. The Eleventh Circuit’s *Bastias v. U.S. Attorney General*, 158 F.4th 1188 (11th Cir. 2025), which was remanded from the Supreme Court, is a primary example: although the panel reached a unanimous decision that its previous definition of a “crime of child abuse” remained binding law, each judge filed a separate concurrence with different reasoning.

Impact on Noncitizens: So far, *Loper Bright* has not significantly changed crime-based removal outcomes: courts are largely reaffirming preexisting precedent through de novo statutory interpretation and stare decisis.

pronouncements in *Loper Bright* that agency interpretations are not only no longer controlling but not even “especially informative.” *Quito-Guachichulca v. Garland*, 122 F.4th 732, 735 (8th Cir. 2024).

II. Board of Immigration Appeals Updates⁸

A. *Relating to Controlled Substances, § 1227(a)(2)(B)(i)*

[**Matter of Frias Ulloa*, 29 I&N Dec. 259 \(BIA 2025\)](#) - Holding that N.J. Stat. Ann. § 2C:35-5(a)(1) and (b)(4), a New Jersey possession with intent statute, is divisible with respect to the identity of the controlled substance. The Board found that because New Jersey law requires prosecutors to name a specific drug in charging documents and because the statute's structure divides various substances into distinct subsections with different penalties, the law is divisible. Applying the modified categorical approach, the Board identified the substance in the record of conviction as fentanyl, a federally controlled substance. The Board held that the conviction rendered the respondent removable under both the controlled substance ground under 8 U.S.C. § 1227(a)(2)(B)(i) and the illicit trafficking aggravated felony under 8 U.S.C. § 1101(a)(43)(B).

[**Matter of Jonalson Dor*, 29 I&N Dec. 20 \(BIA 2025\)](#) - Holding that when conducting a categorical analysis to determine whether a state conviction qualifies as a controlled substance offense, the relevant comparison is the state of the law at the time of the conviction and not the time of the removal proceeding. The Board rejected the respondent's argument that his 2018 conviction for possession of marijuana with intent under 32C(a) of chapter 94C of the Massachusetts General Laws is overbroad because by the time of his removal proceedings, the federal definition of marijuana had been amended to become narrower than the state definition because it excluded hemp. The Board rejected the time-of-removal argument, joining the Second, Third, Ninth, and Eleventh Circuits, because it reasoned that such a rule would interfere with fair notice for noncitizens and counsel to assess the immigration risks of a plea at the time it is entered. *Affirmed in Dor v. Bondi*, 161 F.4th 1 (1st Cir. 2025)

[**Matter of Felix-Figueroa*, 29 I&N Dec. 157 \(BIA 2025\)](#) - Holding that when a respondent argues that a State's drug definition is broader than the federal definition based on a textual mismatch related to chemical isomers, an Immigration Judge must apply the realistic probability test. The Board further explained that once DHS establishes the existence of a state drug conviction by clear and convincing evidence, the burden shifts to the respondent to show that the state actually prosecutes the specific substances or isomers falling outside the Federal schedule. In the case of the respondent, the BIA held that although his conviction for possession for sale of methamphetamine under section 13-3407 of the Arizona Revised Statutes was textually overbroad because Arizona's definition of methamphetamine explicitly includes "positional isomers" and the Federal definition does not, this textual mismatch was not enough to defeat a categorical match. Crucially, the Board acknowledged that its holding here is not applicable in some circuits, including the Second, Seventh, and Eighth, where a textual mismatch between State and Federal controlled substance isomer definitions ends the categorical inquiry and renders the realistic probability test inapplicable. Other circuit courts have cast doubt on this approach, but have not ruled in cases related to isomers specifically.

⁸ In these case summaries, a green asterisk [*] indicates a decision that is generally favorable to noncitizens and a red asterisks [*] indicates the opposite.

B. Crimes Involving Moral Turpitude (CIMT)

[*Matter of Mayorga Ipiná, 29 I&N Dec. 110 \(BIA 2025\)](#) - Holding that a conviction for indecent exposure under Virginia Code § 18.2-387 is a CIMT. Reaffirming *Matter of Cortes Medina*, 26 I&N Dec. 79, 83 (BIA 2013), the BIA explained that indecent exposure offenses are CIMTs where the statute prohibits willful exposure of private parts with lewd intent. Here, the Board held that even though the Virginia statute does not use the term lewd, it requires an obscene display or exposure, which is sufficient to meet the CIMT definition because the state's definition of obscene necessarily entails lewd intent.

[*Matter of Baeza-Galindo, 29 I&N Dec. 1 \(BIA 2025\)](#) - Holding that proximity in time is a necessary but not sufficient factor to determine if two crimes arise from a "single scheme of criminal misconduct" under 8 U.S.C. § 1227(a)(2)(A)(ii). The Board concluded that two CIMTs constitute separate schemes if they involve distinct acts with different objectives, even if one crime logically must occur before the other. In this case, where the respondent was convicted of aggravated assault with a deadly weapon (for killing a pedestrian in an accident) and failure to stop and render aid (after he immediately left the scene), the Board held that attempting to avoid capture for a completed crime is a separate moral wrong with a new criminal objective, rather than an act to facilitate the original offense.

C. Post-Conviction Relief

[*Matter of De Jesus-Platon, 29 I&N Dec. 7 \(BIA 2025\)](#) - Holding, in the context of cancellation of removal, that the respondent did not meet his burden of showing that his conviction was vacated for a substantive or procedural defect under *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003) where the record of vacatur does not explain the underlying grounds. The respondent's conviction had been vacated under California Penal Code section 1473.7. Because the evidence submitted did not clarify whether the vacatur was based on section 1473.7(a)(1), which requires a procedural or substantive defect, the Board found he had not established prima facie eligibility for cancellation of removal.

III. U.S. Supreme Court Updates

A. *Aggravated Felony - Crime of Violence § 1101(a)(43)(F)*

[**Delligatti v. United States*, 604 U.S. 423 \(2025\)](#) - Holding that knowingly or intentionally causing bodily injury, even by omission, constitutes the “use of physical force” for purposes of the definition of a crime of violence under 18 U.S.C. § 924(c)(3)(A). In doing so, the Court effectively addressed the classification of such offenses under the nearly identical definition of a “crime of violence” in 18 U.S.C. § 16(a), which is referenced in the aggravated felony crime of violence and the crime of domestic violence deportability grounds of the Immigration and Nationality Act (INA). While the majority of circuit courts of appeals had already reached this conclusion, *Delligatti* resolved a split by overturning contrary authority, most notably in the Third Circuit, *see United States v. Mayo*, 901 F.3d 218 (3d Cir. 2018), that previously held crimes involving bodily injury caused by omission lacked the requisite “use” of force.

Specifically, the Supreme Court held that second-degree murder under New York law is categorically a “crime of violence” because it requires the specific intent to cause death, a result that would be “impossible” to achieve without the use of physical force. The Court rejected the petitioner’s argument that an offense that requires a specific intent to cause physical harm but can be committed by omission, such as a failure to provide food or medical care, does not involve the “use” of force. The Court reasoned that a person “uses force” when they make force their “instrument,” whether directly or indirectly. The Court explained that the phrase “against the person or property of another” present in both 18 U.S.C. § 16(a) and § 924(c)(3)(A) requires at most that another person be “the conscious object” of the force, a term adopted by the Court’s plurality opinion in *Borden v. United States*, 593 U. S. 420, 430. The Court reasoned that whenever an individual intentionally causes bodily harm to another, even by omission, the victim is “necessarily the conscious object of physical force.”

IV. U.S. Court of Appeals Updates

A. *Relating to Controlled Substances, § 1227(a)(2)(B)(i)*

[*Dor v. Bondi*, 161 F.4th 1 \(1st Cir. 2025\)](#) - Holding that in determining whether a state drug schedule matches the federal controlled substances schedule for purposes of removability under 8 U.S.C. § 1227(a)(2)(B)(i), courts must look to the federal schedule in effect at the time of the noncitizen’s conviction. Affirming *Matter of Jonalson Dor*, 29 I&N Dec. 20 (BIA 2025), the court joined the Second, Third, Eighth, Ninth, and Eleventh Circuits in adopting a time-of-conviction rule. The court explained that this rule ensured predictability and that an alternative rule would make it impossible for defense counsel to provide meaningful *Padilla* advice on the immigration consequences of convictions.

[*Salinas v. Bondi*, 131 F.4th 840 \(8th Cir. 2025\)](#) - Holding that in determining whether a state drug conviction qualifies as a removable controlled substance offense, courts must compare the state statute to the federal Controlled Substances Act (CSA) in effect at the time of the conviction, rather than at the time of removal proceedings, joining the Second, Third, Ninth, and Eleventh circuits. The court reasoned that the time-of-conviction rule aligns with the categorical approach’s goals of efficiency and predictability, ensuring that noncitizens can anticipate the immigration consequences of a guilty plea. The court also held that North Dakota’s definition of marijuana was not overbroad despite referring to the “plant cannabis” while the CSA referred to “cannabis sativa L” because, relying on circuit precedent, the court concluded that Congress used the scientific name as a broad term to encompass all marijuana-producing plants rather than as a species-specific limitation.

B. *Crimes Involving Moral Turpitude (CIMT)*

[*Tomar v. Bondi*, 165 F.4th 123 \(1st Cir. 2026\)](#) - Holding that a conviction under Mass. Gen. L., ch. 272, § 16 for open and gross lewdness is not categorically a CIMT. The court rejected the BIA’s conclusion that the statute necessarily required a lewd intent, a requirement for indecent exposure-type offenses to qualify as CIMTs. Specifically, the court found that the elements of the statute, which requires a defendant to (1) expose genitals, breast, or buttocks, (2) intentionally, (3) openly or with reckless disregard of public exposure, (4) in a manner so as to produce alarm or shock that actually shocks or alarms others, do not necessarily require sexual motivation or an intent to arouse. Based on Massachusetts case law rejecting a sexual-intent requirement, the court found that there is a realistic probability that the statute would apply to nonsexual public nudity such as mooning or nude sunbathing.

[*Ndungu v. Att’y Gen. of the United States*, 126 F.4th 150 \(3d Cir. 2025\)](#) - Holding that fleeing or attempting to elude law enforcement under 75 Pa. Cons. Stat. § 3733(a.2) is not a CIMT. The court found that the statute is divisible (*see infra* IV.O. for full analysis) and that the specific subsection the petitioner was convicted of, endangering others during a high-speed chase, is not a CIMT because it can be committed with reckless conduct undertaken for non-reprehensible reasons, such as a good-faith effort to obtain emergency medical care. For the court’s realistic probability analysis *see infra* IV.M.

[*Chavez v. Bondi, 134 F.4th 207 \(4th Cir. 2025\)](#) - Holding that a 2011 conviction for petit larceny under section 18.2-96 of the Virginia Code is a CIMT. The court rejected petitioner's argument that the statute's claim-of-right defense allows a conviction where a defendant sincerely but unreasonably believed that stolen property had been abandoned, meaning the statute does not require a culpable mental state as is necessary for CIMTs. The court held that Virginia's claim-of-right defense is ultimately a subjective inquiry and does not impose an objective reasonableness requirement and that larceny remains a specific-intent crime requiring intent to permanently deprive. The court also rejected petitioner's arguments that the statute does not entail reprehensible moral conduct. First, the petitioner argued that taking property worth less than a penny is not morally reprehensible under today's norms. The court rejected this argument, holding that Virginia larceny constitutes reprehensible conduct regardless of the value of the property taken. Second, the petitioner argued that the BIA erred by not considering de minimis value when it has distinguished between substantial and temporary takings in analyzing prior theft CIMT cases, specifically *Matter of Diaz-Lizarraga*, 26 I.&N. Dec. 847, 849 (B.I.A 2016). The court rejected this argument, explaining that the distinction in *Diaz-Lizarraga* between substantial takings and takings that do not substantially erode property turns on permanence of deprivation, not monetary value, and that neither the BIA nor federal courts have treated the value of stolen property as relevant to the moral turpitude analysis.

[*Solis-Flores v. Bondi, 159 F.4th 205 \(4th Cir. 2025\)](#) - Holding that a Virginia conviction from 2000 for receipt of stolen property under Va. Code Ann. § 18.2-108 is a CIMT. After the Supreme Court's vacatur of the case in light of *Loper Bright*, the court reaffirmed that the statute is a CIMT. The statute requires that (1) property was previously stolen; (2) the accused received or aided in concealing it; (3) the accused knew it was stolen; and (4) the accused acted with dishonest intent. The court rejected the petitioner's overbreadth argument that a person could violate the statute by knowingly receiving stolen property despite intending to return it to its rightful owner. The court explained that the statute's dishonest intent requirement as interpreted by state courts precluded petitioner's argument. Furthermore, the court noted that the petitioner failed to show a "realistic probability" of prosecution for such conduct. Finally, the court found that receipt of stolen property offenses do not require an intent to permanently deprive to qualify as a CIMT, explaining that the moral culpability of such statutes stems from the receiver's knowledge of the stolen nature of the property.

[*Murillo-Chavez v. Bondi, 128 F.4th 1076 \(9th Cir. 2025\)](#) - Holding that Oregon first-degree criminal mistreatment under O.R.S. § 163.205(1)(a) is categorically a CIMT. The Ninth Circuit concluded that intentionally or knowingly withholding necessary and adequate food, physical care, or medical attention in violation of a legal duty constitutes base, vile, and depraved conduct. The court found the statute is not overbroad because Oregon case law excludes regular negligence and is limited to cruel deprivations and the withholding of absolutely required care for a dependent's basic needs for safety and survival. Additionally, the court reaffirmed circuit precedent that a specific intent to cause harm is not required for a CIMT.

[*Lemus-Escobar v. Bondi, 158 F.4th 944 \(9th Cir. 2025\)](#) - Holding that a conviction under Cal. Penal Code § 246 for maliciously and willfully discharging a firearm at an inhabited dwelling categorically qualifies as a CIMT. Applying the categorical approach, the court identified the elements of § 246 as requiring an intentional discharge of a firearm and at least reckless disregard as to whether the bullet would strike an inhabited structure. The court rejected

petitioner's argument that the statute does not involve moral turpitude because it does not require intent to harm a person and can be violated where no one is actually present. Relying on California case law, the court explained that shooting at an inhabited dwelling inherently poses a significant risk of bodily harm because inhabitants are generally in or around the premises, and that the intentional use of a deadly weapon is a significant aggravating factor in the moral turpitude analysis. Considering the mens rea and actus reus together, the court concluded that the offense involves reprehensible conduct coupled with a culpable mental state and therefore is categorically a CIMT.

C. Aggravated Felony - Sexual Abuse of a Minor (SAM), § 1101(a)(43)(A)

*[Garcia Pinach v. Bondi, 147 F.4th 117 \(2d Cir. 2025\)](#) - Holding that a conviction for second-degree sexual abuse under N.Y. Penal Law § 130.60(2) is an aggravated felony SAM offense. The court held that it was bound by prior Second Circuit precedent, *Debique v. Garland*, 58 F.4th 676, 680-84 (2d Cir. 2023), that found the statute to be an aggravated felony SAM. The court also rejected the petitioner's argument that *Debique* is no longer binding after *Loper Bright* overturned *Chevron* deference, finding that statutory stare decisis is still applicable and *Debique* rested not only on agency deference but also on other independent interpretive analysis.

*[Hsieh v. Bondi, 139 F.4th 337 \(4th Cir. 2025\)](#) - Holding that a conviction under 18 U.S.C. § 2422(b) for inducing a minor to engage in illegal sexual activity is an aggravated felony SAM offense and a crime of child abuse under 8 U.S.C. § 1227(a)(2)(E)(i). The court found that the offense matched the federal definition of SAM because it requires the specific intent to "induce, entice, or coerce" a minor to engage in unlawful sexual activity. The court rejected the petitioner's reliance on *Esquivel-Quintana v. Sessions*, 581 U.S. 385 (2017) to argue that the SAM definition should exclude consensual activity with 16 and 17 year olds by explaining that unlike *Esquivel-Quintana*, which applied to strict liability statutory rape offenses, § 2422(b) requires a specific mens rea and involves the active exploitation of a child. For the court's crime of child abuse analysis *see infra* IV.N.

D. Aggravated Felony - Illicit Trafficking in a Controlled Substance, § 1101(a)(43)(B)

*[Porter v. Bondi, 127 F.4th 993 \(6th Cir. 2025\)](#) - Holding that a Virginia conviction for possession of methamphetamine with intent to distribute under Va. Code Ann. § 18.2-248 is an aggravated felony under 8 U.S.C. § 1101(a)(43)(B). The court found the Virginia statute divisible by substance and determined based on the record of conviction that the petitioner was convicted of possessing methamphetamine. The court rejected petitioner's argument that the offense was not a categorical match due to the unspecified quantity of methamphetamine, explaining that under the Controlled Substances Act, possession with intent to distribute any amount of methamphetamine is punishable by more than one year's imprisonment and therefore qualifies as a "drug trafficking crime" within the meaning of 18 U.S.C. § 924(c)(2).

E. Aggravated Felony - Illicit Trafficking in Firearms, § 1101(a)(43)(C)

*[Alvarez Ronquillo v. Bondi, 151 F.4th 522 \(4th Cir. 2025\)](#) - Holding that a conviction under 18 U.S.C. § 922(a)(1)(A) for engaging in the unlicensed business of dealing in firearms is categorically an aggravated felony illicit trafficking in firearms offense under 8 U.S.C. §

1101(a)(43)(C). The court rejected the petitioner’s argument that the generic definition of illicit trafficking in firearms requires the deliberate transfer of firearms for unlawful use. Based on dictionary definitions from the time the statute was enacted and the INA’s use of “illicit trafficking” in the context of controlled substances, the court concluded that illicit trafficking means “unlawful trading or dealing in firearms.” The court also rejected the petitioner’s alternative argument that § 922(a)(1)(A) is broader because the statute’s “proof of profit” exception allows conviction without evidence of profit, holding that this exception still requires that there be “regular and repetitive purchase and disposition of firearms” and therefore necessarily involves unlawful trading or dealing.

F. Aggravated Felony – Money Laundering, § 1101(a)(43)(D)⁹

***[Reyes v. Bondi, 158 F.4th 657 \(5th Cir. 2025\)](#)** - Holding that a conviction for conspiracy to commit money laundering under 18 U.S.C. § 1956(h) is an aggravated felony under 8 U.S.C. § 1101(a)(43)(D) where an un rebutted forfeiture order constitutes clear and convincing evidence that the laundered funds exceeded \$10,000. Applying the circumstance-specific approach, the court reaffirmed that in establishing the amount, adjudicators are not limited to *Shepard* documents and may rely on sentencing-related materials tethered to the conduct of the conviction. The petitioner argued that the amount forfeited is not specifically tied to his offense of conviction and was entered on a preponderance of the evidence standard, a lower standard than DHS’s clear-and-convincing burden. The court rejected this argument reasoning that the petitioner failed to contest the forfeiture order in his criminal proceedings or demonstrate any error regarding the amount. The court further noted that the almost 4 million dollars found attributable solely to him, provided clear and convincing evidence that the laundered funds exceeded \$10,000 in the absence of any conflicting evidence.

G. Aggravated Felony – Arson, § 1101(a)(43)(E)(i)¹⁰

***[Mohammed v. Bondi, 129 F.4th 988 \(6th Cir. 2025\)](#)** - Holding that a Virginia arson conviction under Va. Code Ann. § 18.2-77, which punishes anyone who maliciously burns or “aids, counsels or procures” the burning of a dwelling or occupied building, is an aggravated felony under 8 U.S.C. § 1101(a)(43)(E)(i). The court rejected the petitioner’s argument that the state statute is overbroad because it expressly includes aiding and abetting, whereas 18 U.S.C § 844(i), the federal arson statute, is silent on accomplice liability. The court explained that since federal law under 18 U.S.C. § 2 makes no distinction between principals and those who aid and abet a crime, such accomplice liability is implicitly embedded in federal offenses.

H. Aggravated Felony - Crime of Violence, § 1101(a)(43)(F) (“COV”)

***[United States v. Cooper, 131 F.4th 127 \(2d Cir. 2025\)](#)** - Holding that New York second-degree attempted assault under N.Y. Penal Law § 120.05(7) is a COV under the Federal Sentencing

⁹ 8 U.S.C. § 1101(a)(43)(D) defines an aggravated felony as “an offense described in section 1956 of title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000 under.”

¹⁰ 8 U.S.C. § 1101(a)(43)(E)(i) defines an aggravated felony as “an offense described in section 842(h) or (i) of title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offense).”

Guidelines. The court rejected the argument that the statute is overbroad because it does not require serious physical injury, explaining that § 120.05(7) requires force capable of causing physical injury, which New York defines as impairment of physical condition or substantial pain. The court concluded that this level of force necessarily satisfies the crime of violence definition under *Johnson v. United States*, 559 U.S. 133 (2010) and *Stokeling v. United States*, 586 U.S. 73 (2019) requiring only force capable of causing physical pain or injury. *Note: This case does not squarely address 18 U.S.C. § 16(a), the federal definition of a “crime of violence” for immigration purposes, but the similarly worded definition of a “crime of violence” under United States Sentencing Guidelines (U.S.S.G.) § 4B1.2.*

***McLean v. Bondi*, 160 F.4th 144 (5th Cir. 2025)** - Holding that a conviction for influencing a federal official by threat under 18 U.S.C. § 115(a)(1) is an aggravated felony COV. The court first determined that the statute is divisible because subsection (b) prescribes different punishment ranges for distinct acts, thereby creating multiple offenses. Applying the modified categorical approach, the court examined the record of conviction and determined that the defendant was convicted of threatening assault, an offense carrying a six-year maximum, rather than simple assault. The majority concluded that threatening assault categorically requires the threatened use of physical force as an element.

***United States v. Elkins*, 161 F.4th 899 (5th Cir. 2025)** - Holding that federal cyberstalking under 18 U.S.C. § 2261A(2)(B) is not a COV, even with a “resulting in death” enhancement under 2261(b). The court determined that the stalking statute, § 2261A(2), is divisible between subsection (A) (placing a victim in reasonable fear of death or serious injury) and subsection (B) (causing substantial emotional distress), but because the jury was instructed that it could convict under either subsection, the court applied the categorical approach to the least culpable conduct under subsection (B). The court concluded that subsection (B) does not have as an element the use, attempted use, or threatened use of physical force, because it can be violated through non-violent conduct such as electronic harassment that results in emotional distress. Additionally, the court found that the “resulting in death” enhancement does not require sufficient force for a COV because it can be committed recklessly. **Note: This case does not squarely address 18 U.S.C. § 16(a), the federal definition of a “crime of violence” for immigration purposes, but the identically worded definition of a “crime of violence” under 18 U.S.C. § 924(c)(3)(A).* For the court’s realistic probability analysis *see infra* IV.M.

***United States v. Juvenile B*, 147 F.4th 837 (8th Cir. 2025)** - Holding that aggravated sexual abuse offenses under 18 U.S.C. §§ 2241(a), 2241(c), and 2244(a)(5) are not categorically COVs. Section 2241(a) requires knowingly causing another person to engage in a sexual act either by force or by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping. The court determined that the statute is overbroad because it can be violated by a threat against “any person,” which includes a threat of self-harm or suicide, but the COV definition under 18 U.S.C. § 16(a) requires the use or threat of force against “another.” The court also found the statute to be indivisible between “force” and “threat.” Additionally, the court held that § 2241(c) is not a COV because it can be committed by “intentional touching” that does not require force necessary to constitute physical force. Similarly, § 2244(a)(5) was found not to be a COV because the definition of “sexual contact” includes acts such as masturbation, which can be performed without force against another person. **Note: While this decision arises in the context of permissive juvenile transfer under 18*

U.S.C. § 5032, the court used the COV definition under 18 U.S.C. § 16(a) in its categorical analysis.

***Rose v. United States, 153 F.4th 664 (8th Cir. 2025)** - Holding that witness tampering by attempted murder in violation of 18 U.S.C. § 1512(a)(1)(A) is categorically a COV. The court rejected the defendant’s argument that the offense is overbroad under *United States v. Taylor*, 596 U.S. 845 (2022). The defendant had argued that the offense can be committed via non-violent “substantial steps,” such as soliciting a third party to murder where that party refuses to act. The court distinguished *Taylor* by noting that while attempted Hobbs Act robbery, at issue in *Taylor*, can be committed by only an “attempted threat,” attempted murder requires a specific intent to kill. The court explained that since it is impossible to cause death without applying physical force, a substantial step taken with the intent to kill, even if unsuccessful or involving indirect action, necessarily constitutes the “attempted use of physical force.” **Note: This case does not squarely address 18 U.S.C. § 16(a), the federal definition of a “crime of violence” for immigration purposes, but the identically worded definition of a “crime of violence” under 18 U.S.C. § 924(c)(3)(A).*

***Villagomez v. McHenry, 127 F.4th 113 (9th Cir. 2025)** - Holding that a Nevada conviction for battery resulting in substantial bodily harm under N.R.S. § 200.481 is categorically a COV. The court concluded that the statute’s actus reus, battery resulting in substantial bodily harm, necessarily entails the requisite COV use of physical force capable of causing physical pain or injury. The court reasoned that because the statute requires a showing of prolonged physical pain under Nevada law, it inherently involves the use of force necessary for a COV. The court rejected the petitioner’s argument that a simple touching of a burn victim could satisfy the statute, finding no realistic probability that Nevada would apply the “substantial bodily harm” enhancement to a de minimis touching that does not actually cause the level of prolonged pain required by the statute. The court also rejected petitioner’s argument that the statute’s willfulness requirement applies only to the intent to use force and not the intent to cause substantial bodily harm. The court held that a defendant need not intend the specific level of resulting injury so long as the underlying use of force was volitional and intentional rather than accidental or merely reckless.

***United States v. Sjodin, 139 F.4th 1188 (10th Cir. 2025)** - Holding that a prior California conviction for assault with a firearm under Cal. Penal Code § 245(a)(2) is not a COV. Relying on *Borden v. United States*, 593 U.S. 420 (2021), the court found the statute overbroad because it permits a mens rea less culpable than the “recklessness” threshold established in *Borden*. Specifically, the court explained that the California Supreme Court has interpreted the statute as not requiring a specific intent to injure or even a subjective awareness of the risk that an injury might occur. Instead, California courts apply an objective “reasonable person” standard, permitting convictions even when a defendant honestly, but unreasonably, believes their actions will not result in a battery. The court reasoned that under *Borden*, on the other hand, a COV requires an awareness that a result is practically certain to follow from one’s conduct, which is not the case under § 245(a)(2). *Note: This case does not squarely address 18 U.S.C. § 16(a), the federal definition of a “crime of violence” for immigration purposes, but the similarly worded definition of a “crime of violence” under United States Sentencing Guidelines (U.S.S.G.) § 4B1.2.*

***United States v. Ford, 157 F.4th 1229 (10th Cir. 2025)** - Holding that federal kidnapping under 18 U.S.C. § 1201(a) is not a COV under 18 U.S.C. § 16(a). The court determined that the federal kidnapping statute is overbroad because it does not necessarily require the use, attempted use, or threatened use of physical force as an element of the offense. The court reasoned that kidnapping can be accomplished through non-physical means such as inveigling or decoying, acts which involve luring, enticing, or leading a person astray through deceit and false promises rather than force. Because these non-violent methods are sufficient for a conviction, the statute encompasses conduct that falls outside a COV.

***United States v. Campbell, 156 F.4th 1019 (10th Cir. 2025)** - Holding that Oklahoma armed robbery under 21 Okla. Stat. Ann. §§ 791, 801 is not a “violent felony” under the ACCA elements clause. The court found that under state law, the statute does not require a specific intent and can be committed with a reckless state of mind regarding the use of force. Therefore, the court held that under *Borden v. United States*, 593 U.S. 420 (2021), because Oklahoma armed robbery encompasses conduct involving the reckless use of force, it is categorically broader than the federal definition of a violent felony. **Note: This case does not squarely address 18 U.S.C. § 16(a), the federal definition of a “crime of violence” for immigration purposes, but the similarly worded definition of a “violent felony” under ACCA.*

***United States v. Harbuck, 146 F.4th 1073 (11th Cir. 2025)** - Holding that South Carolina assault with intent to kill is a violent felony under the ACCA’s elements clause. The court rejected the defendant’s argument that the offense is not a violent felony because it can be committed with implied malice or extreme recklessness. First, the court found that the statute is indivisible and required an unlawful attempt to commit a violent injury with malicious intent which necessarily requires purposeful or knowing intent to commit a violent injury. Second, the court found that even if the offense could be committed with implied malice or extreme recklessness, such offenses would still qualify as violent felonies under Eleventh Circuit precedent. **Note: This case does not squarely address 18 U.S.C. § 16(a), the federal definition of a “crime of violence” for immigration purposes, but the similarly worded definition of a “violent felony” under ACCA.*

I. Aggravated Felony - Theft, 8 U.S.C. § 1101(a)(43)(G)

***Baptista v. Bondi, 136 F.4th 174 (4th Cir. 2025)** - Holding that a Massachusetts conviction under Mass. Gen. Laws ch. 265, § 20 for unarmed assault with intent to rob or steal is categorically an aggravated felony attempted theft offense under 8 U.S.C. §§ 1101(a)(43)(G) and (U). The court rejected the petitioner’s argument that the intent to steal element is overbroad. The petitioner had argued that “steal” under Massachusetts law includes takings with consent, such as embezzlement, rendering the statute overbroad. The court explained that because the statute requires the use of force and violence, it is impossible to commit the offense with the victim’s consent. The court also noted that the petitioner pointed to no case where the statute is applied in that way. For the court’s analysis of the attempt aggravated felony *see infra* IV.L.

J. Aggravated Felony - Fraud or Deceit, § 1101(a)(43)(M)

***Lanoue v. Att’y Gen. of the United States, 142 F.4th 121 (3d Cir. 2025)** - Holding that a conviction under 18 U.S.C. § 287 for filing false claims against the government is an aggravated felony deceit offense under 8 U.S.C. § 1101(a)(43)(M)(i). The court noted that the statute’s mens rea, knowingly submitting a false, fictitious, or fraudulent claim, necessarily entails deceit. The court further explained that an offense qualifies as one “involving fraud or deceit” where its elements inherently require the intentional creation of a false impression. The court found that there is no way to violate § 287 without engaging in deceitful conduct. The court also held that the \$10,000 loss requirement of § 1101(a)(43)(M)(i) was met based on the petitioner’s stipulation and restitution order.

K. Aggravated Felony - Obstruction of Justice, § 1101(a)(43)(S)

***Godoy-Aguilar v. Garland, 125 F.4th 985 (9th Cir. 2025)** - Holding that a conviction for witness intimidation under California Penal Code § 136.1(c)(1) is a categorical match for the generic federal offense of obstruction of justice under 8 U.S.C. § 1101(a)(43)(S). The court concluded that the statute’s requirements, specifically that a defendant act knowingly and maliciously and use an express or implied threat of force or violence to prevent or dissuade a witness or victim from testifying, fall within the generic federal definition of obstruction. Assessing the various state crimes that can serve as a basis for a § 136.1(c)(1) charge (specifically §§ 136.1(a)(1), (a)(2), and (b)(1)-(3)), the court held that each conviction categorically matches obstruction because the underlying acts necessarily require the specific intent to interfere with the administration of justice.

L. Aggravated Felony - Attempt, 8 U.S.C. § 1101(a)(43)(U)

***Baptista v. Bondi, 136 F.4th 174 (4th Cir. 2025)** - Holding that a Massachusetts conviction under Mass. Gen. Laws ch. 265, § 20 for unarmed assault with intent to rob or steal is categorically an aggravated felony attempted theft offense under 8 U.S.C. §§ 1101(a)(43)(G) and (U). The court held that a state offense need not be labeled as an “attempt” to qualify under (a)(43)(U) so long as the elements meet the generic federal definition, which requires (1) an intent to commit an aggravated felony theft offense, and (2) an overt act constituting a substantial step towards the commission of the offense. The court found that this statute includes an intent to commit a theft and satisfies the substantial step requirement because it requires an assault, whether committed as an attempted or threatened battery, which is an overt act constituting a substantial step toward completing the theft. For the court’s analysis of the aggravated felony theft ground *see supra* IV.I.

M. Realistic Probability

***Ndungu v. Att’y Gen. of the United States, 126 F.4th 150 (3d Cir. 2025)** - Holding that the BIA misapplied the realistic probability test when finding that 75 Pa. Cons. Stat. § 3733(a.2) is a CIMT. The court held that the Board misinterpreted the categorical approach by asking whether the minimum conduct for which the petitioner had a realistic probability of prosecution under the statute matched the CIMT definition. The court explained that the BIA was required to first determine whether the minimum conduct under the statute matched the CIMT definition and that

the realistic probability analysis applies only where a petitioner claims overbreadth despite a match between the elements of the state crime and the federal offense. For the court’s CIMT analysis *see supra* IV.B. For the court’s divisibility analysis *see infra* IV.O.

***United States v. Elkins, 161 F.4th 899 (5th Cir. 2025)** - Holding that federal cyberstalking resulting in death under 18 U.S.C. § 2261A(2)(B) is not a COV. The court rejected the government’s realistic probability test argument because it held that the realistic probability test is only appropriate in assessing whether *state* statutes are a categorical match to a federal offense. The test has “no place” in analyzing whether a federal criminal statute is a categorical match. *Note: This case does not squarely address 18 U.S.C. § 16(a), the federal definition of a “crime of violence” for immigration purposes, but the identically worded definition of a “crime of violence” under 18 U.S.C. § 924(c)(3)(A). For the court’s COV analysis *see supra* IV.H.

N. Crime of Child Abuse - 8 U.S.C. § 1227(a)(2)(E)(i)

***Hsieh v. Bondi, 139 F.4th 337 (4th Cir. 2025)** - Holding that a conviction under 18 U.S.C. § 2422(b) for inducing a minor to engage in illegal sexual activity is an aggravated felony sexual abuse of a minor offense and a crime of child abuse under 8 U.S.C. § 1227(a)(2)(E)(i). The court held that the offense matches the three elements of generic child abuse: (1) a culpable mental state, (2) an act creating a reasonable probability of harm, and (3) conduct directed at a child. The court rejected petitioner’s argument that § 2422(b) does not create a reasonable probability of harm because it can be violated through communications with undercover officers and without actual contact with a child. The court explained that the harm required under the generic definition is satisfied in these circumstances because § 2422(b) criminalizes the knowing sexual solicitation of a minor, and such solicitation itself creates a reasonable probability of psychological and developmental harm, even where no physical contact occurs. For the court’s analysis on the sexual abuse of a minor ground *see supra* IV.C.

***Campuzano v. Bondi, 163 F.4th 186 (5th Cir. 2025)** - Holding that a Texas conviction for indecency with a child, sexual contact under Texas Penal Code § 21.11(a)(1) is categorically a crime of child abuse under 8 U.S.C. § 1227(a)(2)(E)(i). Treating the statute as divisible, the court found that the petitioner was convicted under subsection (a)(1), which criminalizes sexual contact with a child with intent to arouse or gratify sexual desire. The court found that the offense matches the generic definition of the removal ground adopted in *Matter of Velazquez-Herrera*, 24 I. & N. Dec. 503, 512 (BIA 2008) because it involves: (1) a victim under the age of 18; (2) a mental state of at least criminal negligence; and (3) an actus reus that impairs a child’s physical or mental well-being. The court rejected the petitioner’s argument that the statute is overbroad for criminalizing mere offensive touching, reasoning that sexual contact under state law requires touching specific body parts and for a specific sexual intent, which necessarily impairs a child’s well-being.

***Sandoval Argueta v. Bondi, 137 F.4th 265 (5th Cir. 2025)** - Holding that a Texas conviction for online solicitation of a minor under Tex. Penal Code § 33.021(c) categorically constitutes a crime of child abuse. The court rejected petitioner’s argument that the statute is overbroad because it permits conviction where no actual child is involved and where the “minor” is an undercover officer. The court reaffirmed the Fifth Circuit’s broad reading of “crime of child abuse,” holding that the statute encompasses offenses that create a sufficiently high risk of harm

to a child, including attempt offenses. The court concluded that knowingly soliciting a person believed to be under seventeen to engage in sexual activity inherently creates a reasonable probability of harm to a child, and that the absence of an actual minor in a sting operation is irrelevant because the key inquiry is whether the noncitizen intended to sexually exploit a child. The court also reaffirmed that, for purposes of the child abuse ground, a “child” includes anyone under eighteen.

[*Bastias v. U.S. Attorney General, 158 F.4th 1188 \(11th Cir. 2025\)](#) - Holding that a Florida conviction for culpably negligent child neglect under Fla. Stat. § 827.03(2)(d) is a crime of child abuse, child neglect, or child abandonment. On remand from the Supreme Court following *Loper Bright*, the court concluded that its pre-*Loper Bright* decision, *Pierre v. U.S. Attorney General*, 879 F.3d 1241 (11th Cir. 2018), remains binding through statutory stare decisis, even though the analysis has changed. The court affirmed that the generic federal definition includes “endangerment-type crimes” and does not require actual injury. While the panel was unanimous in the result, the judges were divided on the rationale.

O. Divisibility

[Ndungu v. Att’y Gen. of the United States, 126 F.4th 150 \(3d Cir. 2025\)](#) - Holding that fleeing or attempting to elude law enforcement under 75 Pa. Cons. Stat. § 3733(a.2) is divisible in two ways: (1) between misdemeanor and felony variants and (2) between the three felony variants. The court held that the statute is divisible between the misdemeanor and felony variants because where grading factors increase the statutory maximum they constitute elements under *Apprendi* and *Mathis*. It further held that the three felony aggravating factors are separate elements, not means, even though they carry the same sentence, because Pennsylvania Superior Court precedent and model jury instructions require juror unanimity as to the specific felony aggravating factor. For the court’s CIMT’s analysis *see supra* IV.B. For the court’s realistic probability analysis *see supra* IV.M.