

INDEX OF BIA AND THIRD CIRCUIT CRIM/IMM DECISIONS

2022

January 1, 2022 – September 1, 2022

Precedential Third Circuit Decisions

Vurimindi v. Attorney General, 2022 WL 3642104, No. 19-1848 & 19-2904 (3d Cir. Aug. 24, 2022) (stalking under 18 Pa. Cons. Stat. § 2709.1(a)(1) is not a removable “crime of stalking,” as the statute is indivisible and the minimum conduct criminalized involves merely causing “substantial emotional distress” to the victim)

Nunez v. Attorney General, 35 F.4th 134, 2022 WL 1672139 (3d Cir. 2022) (N.J. Stat. § 2C:24-4(a)(1), which criminalizes endangering the welfare of a child, requires a particular likelihood of harm to a child and qualifies as a “crime of child abuse” under the INA; this is so even though the statute does not require proof of actual harm to a child)

Jacome v. Attorney General, 2022 WL 2350276, No. 20-2439 (3d Cir. June 30, 2022) (elements of conviction for receiving stolen property under 18 Pa. Cons. Stat. § 3925(a) fit the generic definition of receiving stolen property under 8 U.S.C. § 1101(a)(43)(G) and render that crime an aggravated felony under the INA)

U.S. v. Abreu, 32 F.4th 271, 2022 WL 1298569 (3d Cir. 2022) (conspiracy to commit a crime of violence is not a crime of violence for purposes of sentence enhancement under § 2K2.1(a)(4) of the United States Sentencing Guidelines)

Dawson v. Attorney General, 32 F.4th 254, 2022 WL 1256695 (3d Cir. 2022) (conviction under 35 Pa. Cons. Stat. § 780-113(a)(30) is a controlled substance offense for purposes of sentence enhancement under § 4B1.2(b) of the United States Sentencing Guidelines; even though (a)(30) can be satisfied by the attempted transfer of a controlled substance, drug “delivery” under the statute is a complete offense whether committed through the actual or attempted transfer of drugs)

Non-Precedential Third Circuit Decisions

Abdulai v. Attorney General, No. 20-2305 (3d Cir. Aug. 10, 2022) (a conspiracy to commit fraud or deceit satisfies the dollar threshold for an aggravated felony as long as the conspiracy intended to cause over \$10,000 in losses, even if no actual loss resulted)

Ekundayo v. Attorney General, 2022 WL 3209526, No. 21-2911 (3d Cir. Aug. 9, 2022) (respondent was responsible for losses caused by his co-conspirators after pleading guilty to

conspiracy to commit identify theft, and such loss could be used to meet the \$10,000 threshold required for a fraud-related aggravated felony; moreover, government could establish \$10,000 loss without specifically identifying a victim or victims)

Rosario-Ovando v. Attorney General, 2022 WL 2205257, No. 21-1810 (3d Cir. June 21, 2022) (felony fleeing or eluding a police officer in violation of 75 Pa. Cons. Stat. § 3733 is not categorically a crime involving moral turpitude, as the least culpable conduct under the statute *may* put another person in danger but does not inevitably do so)

Vashchenka v. Attorney General, 2022 WL 2315446, No. 21-3261 (3d Cir. June 28, 2022) (noting, though failing to rule on, BIA’s finding that non-citizen’s conviction for aggravated assault by vehicle while driving under the influence (in violation of 75 Pa. Cons. Stat. § 3735.1(a)) constituted a particularly serious crime barring asylum and withholding of removal)

Graham v. Attorney General, 2022 WL 1564190, No. 21-2167 (3d Cir. May 18, 2022) (conviction for possessing a controlled substance with intent to distribute it within 1000 feet of a school, in violation of N.J. Stat. Ann. § 2C: 35-7, was a particularly serious crime barring asylum and withholding of removal)

Michel v. Attorney General, 2022 WL 1421163, No. 21-1649 (3d Cir. May 5, 2022) (a non-citizen is properly removable under 8 U.S.C. § 1227(a)(2)(E)(ii) (violation of a protective order) where (1) there was a protective order entered by a court against the non-citizen; (2) at least one portion of that order involved protection against a credible threat of violence, repeated harassment, or bodily injury; and (3) a court determined that the non-citizen engaged in conduct that violated that portion of the order; a court may consider “all reliable and probative evidence” in determining the trial court’s findings relative to the third element, and the non-citizen need not engage in violent conduct for his actions to satisfy the second element)

Ojo v. Warden Elizabeth Detention Center, 2022 WL 963999, No. 20-1816 (3d Cir. Mar. 30, 2022) (respondent could be subject to mandatory 1226(c) detention on government’s aggravated felony charge even where charge was added years after his removal case began and he was previously released from immigration custody due to a joint release agreement; the new aggravated felony charge constituted “changed circumstances” warranting re-detention despite the fact that it could have been lodged prior to the respondent’s release)

Hafeed v. Attorney General, 2022 WL 819515, No. 20-3608 (3d Cir. Mar. 17, 2022) (in determining whether the loss attributable to a fraudulent scheme is over \$10,000 and thus qualifies as an aggravated felony, courts should identify the loss attributable to the fraud based on the full record, including the indictment, presentence investigation report, and the plea colloquy)

Wright v. Attorney General, 2022 WL 964004, No. 21-2032 (3d Cir. Mar. 21, 2022) (robbery under N.J. Stat. Ann. §2C:15-1(a) is a divisible offense and subject to the modified categorical approach; a conviction for first-degree robbery under this subsection is a crime of violence)

Pilataxi v. Attorney General, 2022 WL 1115428, Nos. 20-137 & 21-1678 (3d Cir. Mar. 3, 2022) (where state court record reflects that only claim in petition for vacatur of criminal conviction forming basis of removal was ineffective assistance of counsel, vacatur was for defect in underlying criminal proceeding; immigration court may not speculate about other reasons for vacatur not stated in state record)

Joe v. Attorney General, 2022 WL 604038, No. 21-2637 (3d Cir. Mar. 1, 2022) (respondent was not necessarily convicted of fraud aggravated felony where government had not demonstrated that the offenses of which he was actually *convicted* produced a loss to his victims of more than \$10,000)

Pena Charles v. Attorney General, 2022 WL 337000, No. 21-3021 (3d Cir. Feb. 4, 2022) (reaffirming *Javier v. Att’y Gen.*, 826 F.3d 127, 131 (3d Cir. 2016) and finding that conviction for making terroristic threats under 18 Pa. C.S.A. § 2706(a)(1) is categorically a CIMT; holding that “a threat communicated with a specific intent to terrorize is an act ‘accompanied by a vicious motive or a corrupt mind’”)

Alexander v. Attorney General, 2022 WL 337001, No. 21-1474 (3d Cir. Feb. 4, 2022) (BIA did not err in determining that conviction under N.J. Stat. Ann. § 2C:35-7, which criminalizes the knowing intent to distribute a controlled substance within 1000 feet of school property, was a particularly serious crime barring asylum and withholding of removal; the BIA could consider “all reliable information,” including “information outside the confines of [the] record of conviction,” in deciding whether the crime was particularly serious)

Perez v. Attorney General, 2022 WL 254355, No. 21-1274 (3d Cir. Jan. 26, 2022) (a conviction under Sections 22-1803 and 22-3009 of the D.C. Criminal Code, which criminalize attempts to engage in sexual contact with a child or cause a child to engage in sexual contact, is categorically an aggravated felony for sexual abuse of a minor)

Board of Immigration Appeals (BIA) Precedential Decisions

Matter of Ortega-Quezada, 28 I&N Dec. 598 (BIA 2022) (respondent’s conviction for unlawfully selling or otherwise disposing of a firearm or ammunition in violation of 18 U.S.C. § 922(d) (2018) does not render him removable as charged under section 237(a)(2)(C) of the INA, as the statute is overbroad relative to its federal counterpart; 922(d) covers acts such as gratuitously transferring a

firearm without compensation and disposing of ammunition, which do not fall within the definition found at 237(a)(2)(C))

Matter of D-L-S-, 28 I&N Dec. 568 (BIA 2022) (a respondent who is subject to a deferred adjudication that satisfies the elements of sections 101(a)(48)(A)(i) and (ii) of the Immigration and Nationality Act (“INA”) has been “convicted by a final judgment” within the meaning of the particularly serious crime bar under section 241(b)(3)(B)(ii) of the INA)

Matter of B-Z-R-, 28 I&N Dec. 563 (A.G. 2022) (overruling *Matter of G-G-S-*, 26 I&N Dec. 339 (BIA 2014) and finding that immigration adjudicators may consider a respondent’s mental health in determining whether an individual, “having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States.”)

Matter of German Santos, 28 I&N Dec. 552 (BIA 2022) (any fact that establishes or increases the permissible range of punishment for a criminal offense is an “element” for purposes of the categorical approach—even if the term “element” is defined differently under state law; Title 35, section 780-113(a)(30) of the Pennsylvania Consolidated Statutes, which punishes possession with intent to deliver a controlled substance, is divisible with respect to the identity of the controlled substance possessed)

Matter of Dingus, 28 I&N Dec. 529 (BIA 2022) (*Matter of Pickering*’s test regarding the validity of vacated convictions applies to determining if a subject matter conviction modification is based on a procedural or substantive defect in the underlying criminal proceedings; if so, the original conviction is invalid for immigration purposes and a court should give full effect to the modified conviction. Section 18.2-248 of the Virginia Code, which criminalizes the distribution of a controlled substance, is divisible with respect to the identity of the specific “controlled substance” involved in a violation of that statute)

Matter of Dang, 28 I&N Dec. 541 (BIA 2022) (the Supreme Court’s construction of “physical force” in *Johnson v. U.S.* and *Stokeling v. U.S.* controls the BIA’s interpretation of 18 U.S.C. § 16(a) which is incorporated by reference into section 237(a)(2)(E)(i) of the INA; the Court’s construction of “physical force” in *U.S. v. Castleman* does not apply to 237(a)(2)(E)(i). Because misdemeanor domestic abuse battery with child endangerment under section 14:35.3(I) of the Louisiana Statutes extends to mere offensive touching, it is overbroad with respect to § 16(a) and therefore is not categorically a crime of domestic violence under section 237(a)(2)(E)(i))

Matter of F-R-A-, 28 I&N Dec. 460 (BIA 2022) (courts should look to the “facts and circumstances underlying an offender’s conviction” to determine if the loss to victims in a criminal conviction exceeded \$10,000, and may “consider any admissible evidence” to determine the loss amount; this includes an order of forfeiture if the forfeiture ordered “was traceable and sufficiently tethered to the conviction”)

Matter of C. Morgan, 28 I&N Dec. 508 (BIA 2022) (larceny in the third degree under section 53a-124(a) of the Connecticut General Statutes is not a theft offense aggravated felony because it incorporates by reference a definition of “larceny” that is overbroad and indivisible with respect to the generic definition of a theft offense; larceny here includes acts such as “obtaining property by false pretenses,” “obtaining property by false promise,” “defrauding of public community” and “air bag fraud,” none of which require the non-consensual taking of property and thus are not “theft offenses” under *Matter of Garcia-Madruga*)

Matter of S. Wong, 28 I&N Dec. 518 (BIA 2022) (a finding of guilt in a proceeding that affords defendants all of the constitutional rights of criminal procedure that are applicable without limitation and that are incorporated against the States under the Fourteenth Amendment is a “conviction” for immigration purposes under the INA; these rights are: proof beyond a reasonable doubt; the right to confront one’s accuser; a speedy and public trial; notice of the accusations; compulsory process for obtaining witnesses in one’s favor; and the right against being put in jeopardy twice for the same offense)

Matter of Koat, 28 I&N Dec. 450 (BIA 2022) (Section 714.1 of the Iowa Code, which criminalizes theft in the first degree, is divisible with respect to whether a violation of the statute involves theft by taking without consent or theft by fraud or deceit; as such, adjudicators are permitted to review the conviction record under the modified categorical approach to determine whether the conviction involved aggravated felony theft)

Matter of Laguerre, 28 I&N Dec. 437 (BIA 2022) (because the identity of the “controlled dangerous substance” possessed is an element of the crime of possession of a controlled dangerous substance under section 2C:35-10(a)(1) of the New Jersey Statutes Annotated, the statute is divisible with respect to the substance possessed, and the record of conviction can be examined under the modified categorical approach to determine whether that substance is a controlled substance under federal law)

2021

Supreme Court Decisions

Borden v. United States, 141 S.Ct. 1817, 2021 WL 2367312 (2021) (a criminal offense that requires only a *mens rea* of recklessness cannot count as a “violent felony” under the elements clause of the Armed Criminal Career Act (ACCA); “use of physical force” under the ACCA’s violent felony definition means the volitional or active employment of force)

Precedential Third Circuit Decisions

U.S. v. Quinones, 16 F.4th 414, 2021 WL 4955865 (3d Cir. 2021) (18 Pa. Const. Stat. § 2703, which criminalizes “caus[ing] another to come into contact with [bodily] fluid,” is not a “crime of violence” under the United States Sentencing Guidelines; merely spitting or expelling fluid are not acts “capable of causing physical pain or injury” to another and thus do not involve the “physical force” necessary for a COV)

Singh v. Attorney General, 12 F.4th 262, 2021 WL 3878253 (3d Cir. 2021) (where an individual is a naturalized citizen at the time of his conviction, he is not removable under the INA’s aggravated felony provision)

Gayle v. Warden Monmouth County Correctional Institution, 12 F.4th 321, 2021 WL 4006189 (3d Cir. 2021) (8 U.S. Code Section 1226(c) is constitutional even as applied to noncitizens who have substantial defenses to removal; for those detainees who contend that they are not properly included within § 1226(c) and are therefore entitled to a hearing pursuant to *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999), the Government has the burden to establish the applicability of § 1226(c) by a preponderance of the evidence and must make available a contemporaneous record of the hearing, consisting of an audio recording, a transcript, or their functional equivalent)

Sasay v. Attorney General, 13 F.4th 291, 2021 WL 4127431 (3d Cir. 2021) (under the modified categorical approach, respondent’s conviction for aggravated identity theft under 18 U.S.C. § 1028A(a)(1) constituted a CIMT, as it was committed during and in relation to the predicate felony of bank fraud)

United States v. Scott, 14 F.4th 190, 2021 WL 4302516 (3d Cir. 2021) (Hobbs Act robbery under 18 U.S.C. § 1951(b)(1) is not a crime of violence under the categorical approach; because it encompasses offenses in which force is applied only to property, it sweeps more broadly than robbery as defined in the U.S. Sentencing Guidelines)

K-A- v. Attorney General, 997 F.3d 99, 2021 WL 1743565 (3d Cir. 2021) (NJ second degree robbery under § 2C:15-1 is an aggravated felony “theft offense” and also a particularly serious crime barring asylum and withholding of removal. Moreover, the definition of “consent” for a generic theft offense requires that the victim do more than agree, but rather assent voluntarily and intelligently; this is a broader definition than the 4th, 9th, and 11th Circuits as well as the BIA have adopted, and includes conduct beyond lack of assent from a victim)

Aristy-Rosa v. Attorney General, 994 F.3d 112, 2021 WL 981490 (3d Cir. 2021) (a state pardon for a CSO does not negate the CSO ground of deportability because while 1227(a)(2)(A) — general crimes — includes a pardon waiver, 1227(a)(2)(B) — CSOs — does not; OLC

memorandum holding that a CSO waiver exists for presidential pardons does not extend to a governor's pardon)

Arcos Sanchez v. Attorney General, 997 F.3d 113, 2021 WL 1774965 (3d Cir. 2021) (overturning *Matter of Castro-Tum* and finding that 8 C.F.R. §§ 1003.10(b) and 1003.1(d)(1)(ii) unambiguously authorize general administrative closure in immigration cases; stating that the regulations afford IJs and the Board authority to take any action (including administrative closure) as is appropriate and necessary for the disposition of such case to resolve questions in a timely and impartial manner consistent with the Immigration and Nationality Act)

United States v. Walker, 990 F.3d 316, 2021 WL 833994 (3d Cir. 2021) (an attempt to commit a crime of violence categorically qualifies as a COV itself; Hobbs Act Robbery and attempted Hobbs Act Robbery are both categorically crimes of violence)

Sunuwar v. Attorney General, 989 F.3d 239, 2021 WL 728417 (3d Cir. 2021) (respondent properly rendered deportable under 8 U.S.C. § 1227(a)(2)(E)(ii) for contempt conviction under 23 Pa. Cons. Stat. § 6114(a); moreover, BIA's finding that respondent's strangulation conviction under 18 Pa. Cons. Stat. § 2718(a) was a "particularly serious crime" barring him from asylum and withholding of removal was not erroneous)

Non-Precedential Third Circuit Decisions

Tomlinson v. Attorney General, 2021 WL 5632081, No. 20-3479 (3d Cir. Dec. 1, 2021) (citing to *Singh v. Gonzales*, 432 F.3d 533, 540 (3d Cir. 2006) and finding that simple assault under 18 Pa. Cons. Stat. § 2701(a)(3) is categorically a "crime of violence" under the INA)

McKoy v. Attorney General, 2021 WL 4956073, No. 20-3626 (3d Cir. Oct. 26, 2021) (18 Pa. Cons. Stat. § 6318(a)(1), criminalizing unlawful contact with a minor, is divisible and subject to the modified categorical approach when making determinations about a respondent's removability)

Evangelista v. Attorney General, 2021 WL 4786904, No. 19-3825 (3d Cir. Oct. 14, 2021) (where respondent remained eligible for § 212(c) relief between the time that he chose to go to trial rather than take a plea deal and the time that he was found guilty by a jury, AEDPA cannot be applied to withdraw that eligibility without violating the bar on retroactivity)

McCalla v. Attorney General, 858 Fed.Appx. 525 (Mem), 2021 WL 2399697 (3d Cir. 2021) (reaffirming the holding of *Aristy-Rosa v. Attorney General* and finding that a full gubernatorial pardon does not extinguish the immigration consequences of a conviction for a controlled substance offense)

Patino Madge v. Attorney General, 2021 WL 4438747, No. 20-3404 (3d Cir. Sep. 28, 2021) (holding that simple assault under 18 Pa. Cons. Stat. § 2701(a)(3) is categorically a crime of violence aggravated felony because it requires a threat of violent force)

Davis v. Attorney General, 2021 WL 4145114, No. 20-2937 (3d Cir. Sep. 13, 2021) (reiterating that the modified categorical approach applies to 35 P.S. § 780-113(a)(30) and that a court, in reviewing a non-citizen's conviction under this approach, may only examine "the statutory definition [of the offense], charging document, written plea agreement, transcript of the plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented"; because none of those documents contained any information about the amount of marijuana possessed by defendant Davis, his conviction was analogous only to a federal misdemeanor and not an aggravated felony or presumptive particularly serious crime for immigration purposes)

Sybliss v. Attorney General, 2021 WL 3415050, No. 20-2242 (3d Cir. Aug. 5, 2021) (non-citizen's three convictions for possession of 50 grams or less of marijuana, in violation of N.J. Stat. Ann. § 2C:35-10(a)(4), did not fall under the personal use exception to CSO offenses; even though all three offenses collectively involved possession of less than 30 grams of marijuana, the personal use exception excuses only one such conviction)

Lopez Rodriguez v. Attorney General, 2021 WL 3052552, No. 20-3309 (3d Cir. Jul. 20, 2021) (reiterating that (1) theft by deception under N.J. Stat. Ann. § 2C:20-4(a) qualifies as a CIMT; and (2) for purposes of the Cancellation of Removal "stop-time rule," it is the date of commission of a qualifying offense, not the date of conviction, that triggers application of the rule)

United States v. Shaw, 858 Fed.Appx. 531 (Mem), 2021 WL 4193228, (3d Cir. 2021) (applying the Supreme Court's holding in *Borden* and remanding for new sentencing of offender convicted of assault with a dangerous weapon under 18 U.S.C. § 113(a)(3), as offense involved a minimum *mens rea* of recklessness and, given *Borden*, he no longer qualified as a career offender)

Cisneros-Mayo v. Attorney General, 859 Fed.Appx. 640, 2021 WL 2117784 (3d Cir. 2021) (making an unsworn falsification under 18 Pa. Cons. Stat. § 4904(a)(3) constitutes a CIMT)

Liao v. Attorney General, 846 Fed.Appx. 122 (Mem), 2021 WL 1828426 (3d Cir. 2021) (terminating case where government agreed that respondent's conviction for terroristic threats under 18 Pa. Const. Stat. § 2706(a)(1) did not constitute a removable crime of domestic violence)

Balisage v. Attorney General, 851 Fed.Appx. 314, 2021 WL 1784339 (3d Cir. 2021) (non-citizen's convictions under N.J. Stat. Ann. § 2C:35-5(a)(1) and § 2C:35-5(b)(3) constituted both a controlled-substance offense (CSO) and drug trafficking aggravated felony subjecting him to removal; upholding *Martinez v. Att'y Gen.*, 906 F.3d 281, 284 (3d Cir. 2018) and finding that, for

purposes of determining whether a conviction is a CSO, federal and state drug schedules must be compared at the time of conviction)

Bent v. Attorney General, 852 Fed.Appx. 55, 2021 WL 1054118 (3d Cir. 2021) (conspiracy to commit racketeering in violation of 18 U.S.C. § 1962(d) facially qualifies as an aggravated felony under the INA)

Harmon v. Attorney General, 844 Fed.Appx. 557, 2021 WL 351714 (3d Cir. 2021) (BIA properly looked to court documents to determine that respondent's conviction for trafficking heroin under 35 Pa. Stat. § 780-113(a)(30) comprised drug trafficking aggravated felony)

Board of Immigration Appeals (BIA) Precedential Decisions

Matter of Valenzuela, 28 I&N Dec. 418 (BIA 2021) (carjacking under §215(a) of the California Penal Code, which prohibits the “felonious taking of a motor vehicle in the possession of another, from his or her person or immediate presence, or from the person or immediate presence of a passenger of the motor vehicle, against his or her will and with the intent to either permanently or temporarily deprive the person in possession of the motor vehicle of his or her possession, accomplished by means of force or fear” is categorically a crime of violence aggravated felony)

Matter of Aguilar-Barajas, 28 I&N Dec. 354 (BIA 2021) (the offense of aggravated statutory rape under section 39-13-506(c) of the Tennessee Code Annotated, which criminalizes “the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim, when the victim is at least thirteen but less than eighteen years of age and the defendant is at least ten years older than the victim,” is categorically a “crime of child abuse” under the INA)

Matter of Mensah, 28 I&N Dec. 288 (BIA 2021) (an Immigration Judge may rely on fraud or a willful misrepresentation of a material fact made by a non-citizen during an interview before the United States Citizenship and Immigration Services to deny adjustment of status due to inadmissibility under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act)

Matter of Nemis, 28 I&N Dec. 250 (BIA 2021) (under the categorical approach, the federal conspiracy statute, 18 U.S.C. § 371 (2012), is overbroad and divisible between its offense clause, which may or may not involve moral turpitude, and its defraud clause, which is categorically a crime involving moral turpitude; respondent's conviction for conspiracy to commit visa fraud in violation of 18 U.S.C. §§ 371 and 1546(a) is a conviction for a crime involving moral turpitude under the modified categorical approach)

Matter of Aguilar-Mendez, 28 I&N Dec. 262 (BIA 2021) (conviction for assault by means of force likely to produce great bodily injury in violation of § 245(a)(4) of the California Penal Code is categorically one for a crime involving moral turpitude)

Matter of Vucetic, 28 I&N Dec. 276 (BIA 2021) (the offense of aggravated unlicensed operation of a motor vehicle in the first degree in violation of section 511(3)(a)(i) of the New York Vehicle and Traffic Law, which prohibits a person from driving under the influence of alcohol or drugs while knowing or having reason to know that his or her license is suspended, is categorically a crime involving moral turpitude; recklessness is a sufficient culpable mental state for moral turpitude purposes where it entails a conscious disregard of a substantial and unjustifiable risk posed by one's conduct)

Matter of Al Sabsabi, 28 I&N Dec. 269 (BIA 2021) (because the underlying criminal offense is an element (rather than a means) of committing a conspiracy, the “offense clause” of the federal conspiracy statute, 18 U.S.C. § 371 (2012), is divisible; a conspiracy is categorically a crime involving moral turpitude if the underlying criminal object of the conspiracy is itself a crime involving moral turpitude, so the respondent's conviction for conspiracy to sell counterfeit currency in violation of 18 U.S.C. § 473 (2012) was for a CIMT)

October 2020 - December 2020

Precedential Third Circuit Decisions

Rad v. Attorney General, 983 F.3d 651, 2020 WL 7485694 (3d Cir. 2020) (a conspiracy or attempt to commit fraud or deceit involving over \$10,000 in intended losses, even where victims are not specifically identified, qualifies as an aggravated felony; in addition, the criminal provisions of the CAN-SPAM Act, delineated under 18 U.S.C. §§ 1037(a)(3) and (a)(4); necessarily entail deceit and satisfy the first element of an aggravated felony under 8 U.S.C. § 1101(a)(43)(M)(i)).

Larios v. Attorney General, 978 F.3d 62, 2020 WL 6054598 (3d Cir. 2020) (modified categorical approach applied in analyzing respondent's conviction under N.J. Stat. Ann. § 2C:12-3(a) (terroristic threats); because respondent's conduct involved a *mens rea* of mere recklessness and § 2C:12-3(a) lacks any statutory aggravating factors, respondent's conviction was not a CIMT)

Martinez v. Attorney General, 978 F.3d 860, 2020 WL 6155663 (3d Cir. 2020) (under the modified categorical approach, a conviction under N.J. Stat. Ann. § 2C:14-3(b) for aggravated criminal sexual contact (as committed pursuant to circumstances set forth in N.J. Stat. Ann. § 2C:14-2(c)(4)) qualifies as a “sexual abuse of a minor” aggravated felony)

Khan v. Attorney General, 979 F.3d 193, 2020 WL 6437969 (3d. Cir 2020) (2011 state repeal of marijuana possession statute (Conn. Gen. Stat. § 21a-279(c)) did not prevent respondent’s conviction under the statute from triggering the stop-time rule for cancellation of removal, as “vacatur has no effect on when an offense was committed” or “on whether a noncitizen is rendered inadmissible”)

Non-Precedential Third Circuit Decisions

Thakker v. Attorney General, 837 Fed.Appx. 75, 2020 WL 6938800 (3d Cir. 2020) (holding counsel ineffective where they failed to argue, post-*Mathis v. United States*, that respondent’s conviction for retail theft under 18 Pa. Cons. Stat. Ann. § 3929(a)(1) was not a CIMT, as the BIA “seriously questioned” *Matter of Jurado* in *Matter of Diaz-Lizarraga*, and *Jurado*’s assumption that retail theft involves an intent to permanently deprive may not survive *Mathis*)

Board of Immigration Appeals (BIA) Precedential Decisions

Matter of Voss, 28 I&N Dec. 107 (BIA 2020) (if a criminal conviction was charged as a ground of removability or was known to the Immigration Judge at the time cancellation of removal was granted under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a) (2018), that conviction cannot serve as the sole factual predicate for a charge of removability in subsequent removal proceedings)

Matter of Rivera-Mendoza, 28 I&N Dec. 184 (BIA 2020) (§163.545(1) of the Oregon Revised Statutes categorically constitutes a “crime of child abuse,” as the statute’s phrase “may be likely to endanger the health or welfare of a child,” necessitates “more than a mere possibility of, or potential for, harm” to a child)

Matter of Reyes, 28 I&N Dec. 52 (A.G. 2020) (if all of the means of committing a crime amount to one or more aggravated felonies under the INA, then the non-citizen who has been convicted of that crime has necessarily been convicted of an aggravated felony; grand larceny in the second degree under New York Penal Law § 155.40(1) qualifies as a conviction for an aggravated felony because larceny by acquiring lost property constitutes aggravated-felony theft, and the other means of violating the New York statute correspond to either aggravated-felony theft or aggravated-felony fraud)