

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2024

(Argued: October 25, 2024

Decided: August 31, 2026)

No. 23-6837

ROBERT DZIEDZIACH,

Petitioner,

-v.-

TODD BLANCHE, United States Attorney General,

Respondent.

Before: LEVAL, LIVINGSTON, and NATHAN, *Circuit Judges.*

Petitioner Robert Dziedziach, a native and citizen of Poland, seeks review of a June 29, 2023, decision of the Board of Immigration Appeals concluding that he was convicted of a crime involving moral turpitude within the meaning of the Immigration and Nationality Act and dismissing his appeal of the immigration judge's determination of removability. We conclude that Dziedziach's conviction for conspiracy to retaliate against a witness, in violation of 18 U.S.C. § 1513(b), is categorically a crime involving moral turpitude and that this ground for removability is not unconstitutionally vague as applied to him. With respect

to Dziedziach's other asserted grounds for review, we need not reach these arguments under the law of the case doctrine; in any event, they fail on their merits. Accordingly, we **DENY** the petition for review.

FOR PETITIONER:

THOMAS E. MOSELEY, Newark, N.J.

FOR RESPONDENT:

IMRAN R. ZAIDI (Lindsay B. Glauner, *on the brief*), Senior Litigation Counsels, Office of Immigration Litigation, *for* Brian M. Boynton, Principal Deputy Assistant Attorney General, Civil Division, United States Department of Justice, Washington, D.C.

DEBRA ANN LIVINGSTON, *Circuit Judge*:

Petitioner Robert Dziedziach, a native and citizen of Poland, seeks review of a June 29, 2023, decision of the Board of Immigration Appeals ("BIA") concluding that Dziedziach was convicted of a crime involving moral turpitude ("CIMT") within five years of his admission to the United States and is for this reason subject to removal pursuant to § 237(a)(2)(A)(i) of the Immigration and Nationality Act ("INA").¹ 8 U.S.C. § 1227(a)(2)(A)(i).

¹ Section 1227(a)(2)(A)(i) provides that an alien is removable if he is "convicted of a crime involving moral turpitude committed within five years . . . after the date of admission, . . . and for which a sentence of one year or longer may be imposed." 8 U.S.C. § 1227(a)(2)(A)(i).

Dziedziach worked for a construction company that in 2005 was sued by a number of its employees for not paying the required prevailing wage on federally funded construction projects. Dziedziach and others, including the company's president, thereafter conspired to intimidate and assault the plaintiffs. Dziedziach's conduct included hiring someone to throw acid on a plaintiff's girlfriend and directing a purported Russian mobster to beat 11 people "badly enough to require a three-month stay in the hospital." Gov't Sentencing Mot. at 2, *United States v. Dziedziach*, No. 8-707 (E.D.N.Y. July 5, 2012). In 2012, Dziedziach was convicted of conspiracy to retaliate against witnesses and parties to an official proceeding in violation of 18 U.S.C. § 1513(b) and (f).

Dziedziach's petition presents two principal arguments: (1) that a conviction for conspiracy to retaliate in violation of 18 U.S.C. § 1513(b) and (f) does not categorically constitute a CIMT; and (2) that the CIMT ground of removability is unconstitutionally vague as applied to him.² We disagree as to both arguments.

² Dziedziach also argues that: (1) a previous panel of this Court erred in remanding to the BIA; (2) the conduct underlying his conviction was not committed within five years of his admission, as required by § 1227(a)(2)(A)(i); (3) the evidence he put forth before the agency establishes his eligibility for relief under the Convention Against Torture ("CAT"); and (4) he is eligible for a waiver of removability pursuant to 8 U.S.C. § 1182(h).

We conclude that the crime of which Dziedziach stands convicted categorically involves moral turpitude and that the phrase “moral turpitude” in our immigration laws is not unconstitutionally vague as applied to him. We have previously considered and rejected his other arguments which, in any event, lack merit. We therefore **DENY** his petition for review.

BACKGROUND³

I. Factual Background

Robert Dziedziach is a Polish citizen who crossed the Mexican border with Texas in 1999, entering the United States without inspection. In May 2006, he adjusted to lawful permanent resident status. Dziedziach traveled to Poland after adjusting his status, and in November 2006 he returned to the United States.

Dziedziach’s criminal conviction stemmed from his involvement between April 2006 and September 2008 in a conspiracy to retaliate against employees of the construction company at which he worked as foreman. These employees had sued their employer for requiring them to return part of their cashed paychecks, a requirement that meant the company was not paying the prevailing wage on

³ The factual background presented here is not in dispute and derives primarily from the Certified Administrative Record (“CAR”).

federally funded construction projects. The plaintiffs alleged that their employer required them to kick back cash from their weekly paychecks to the employer and to Dziedziach. As part of the conspiracy to intimidate these plaintiffs into dropping their suit, Dziedziach and a co-conspirator paid \$15,000 to another co-conspirator, who “threw acid on a plaintiff’s girlfriend and then on the car of another plaintiff.” Gov’t Sentencing Mot. at 2, *United States v. Dziedziach*, No. 8-707 (E.D.N.Y. July 5, 2012) (citing the presentence report). When that effort failed to put an end to the litigation, Dziedziach directed a person he believed to be a Russian mobster that “11 people would need to be beaten,” ideally “badly enough to require a three-month stay in the hospital.” *Id.*

Based on a guilty plea, Dziedziach was convicted in July 2012 of conspiracy to retaliate against witnesses and parties in violation of 18 U.S.C. § 1513(b) and (f) and was sentenced to 364 days of imprisonment.⁴ The Department of Homeland Security commenced removal proceedings on November 27, 2012.

⁴ Section 1513(b) imposes criminal penalties, in relevant part, on any person who: . . . knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for—

(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

II. Procedural History

Before an immigration judge (“IJ”), Dziedziach moved to terminate removal proceedings in February 2013, arguing that his conviction was not for a crime involving moral turpitude and did not occur within five years of his admission. The IJ denied Dziedziach’s motion to terminate, concluding that Dziedziach’s crime is categorically a crime of moral turpitude and that he committed the offense between April 2006 and September 2008, which was within five years of both his 2006 adjustment of status to that of a lawful permanent resident and his admission to the United States later that year after he traveled abroad. The IJ rejected Dziedziach’s argument that the five years should run from 1999, when Dziedziach initially entered the United States without inspection or admission.

Dziedziach then applied for two different types of relief: a waiver of inadmissibility under 8 U.S.C. § 1182(h) based on hardship to his U.S. citizen father, and relief under the Convention Against Torture (“CAT”) based on a fear

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- (2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings given by a person to a law enforcement officer

18 U.S.C. § 1513(b). Section 1513(f) in turn provides: “Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.” *Id.* § 1513(f).

of torture in Poland. A new IJ denied Dziedziach's two requests.⁵ The IJ found that Dziedziach could not adjust status, a prerequisite to the hardship waiver. As for CAT relief, the IJ concluded that Dziedziach was ineligible because he had not shown that any of the individuals from whom he feared harm would be aware of his return to Poland, he had "not demonstrated that the Polish government would acquiesce to his torture," and because he could relocate within Poland to escape the risk of torture. IJ Or. at 6–8, *Dziedziach* (Immigr. Ct. N.Y.C. Nov. 23, 2015), Certified Administrative Record ("CAR") at 227–29; *see also* 8 C.F.R. § 1208.16(c)(3)(ii).

After losing before these two IJs, Dziedziach appealed to the BIA, which dismissed the appeal. We then granted Dziedziach's first petition for review and remanded for the BIA to reconsider whether Dziedziach had committed a crime of moral turpitude given that his conviction did not fall within the CIMT definition invoked by the BIA in its decision. *Dziedziach v. Barr*, 799 F. App'x 70, 72 (2d Cir. 2020) (summary order). Dziedziach's first petition raised many of the same

⁵ A new IJ presided because of a venue transfer from Pennsylvania to New York. The first IJ applied the law of the Third Circuit, but the second IJ expressly agreed with the first IJ's determination that Dziedziach was convicted of a crime involving moral turpitude. IJ. Or. at 2, *Dziedziach* (Immigr. Ct. N.Y.C. Nov. 23, 2015), CAR at 223.

arguments that Dziedziach raises here. *See* Br. of Pet’r Robert Dziedziach at i, 11–47, *id.* (No. 17-1471). We expressly declined to reach Dziedziach’s arguments that a § 1513(b) conviction is not categorially a CIMT or that the CIMT ground of removability is void for vagueness, but we explicitly stated “[a]s to Dziedziach’s remaining arguments” that “we find them to be without merit.” *Dziedziach*, 799 F. App’x at 72. In June 2023, the BIA again concluded, in an unpublished decision, that Dziedziach was convicted of a crime that categorically is a crime of moral turpitude because a conviction under 18 U.S.C. § 1513(b) requires a culpable mental state and involves reprehensible conduct, even when the conduct only causes or threatens property damage. Dziedziach thereafter filed the instant petition.

DISCUSSION

Dziedziach now advances six arguments: (1) the prior panel should not have remanded for the BIA to reconsider its conclusion that his conviction is a CIMT; (2) his conviction is not a CIMT under the INA; (3) the CIMT ground of removability is unconstitutionally vague; (4) the conduct underlying his conviction was not committed within five years of admission, as § 1227(a)(2)(A)(i) requires; (5) the evidence he put forth establishes a likelihood of torture with

government acquiescence; and (6) he is eligible for a § 1182(h) waiver. We reject all of Dziedziach's arguments—rejecting on the merits his principal arguments that his crime of conviction is not categorically a CIMT and that the definition of a crime of moral turpitude is unconstitutionally vague as applied to him, and declining to reach the other arguments because they were rejected during our consideration of Dziedziach's first petition.⁶

I

Where the BIA conducts its own independent analysis of a legal issue, as it generally did here, we review only the BIA decision. *See Chen v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). But we consider an IJ's decision where the BIA "expressly adopts or defers to a finding of the IJ," as it did with regard to the second IJ's CAT analysis.⁷ *Wangchuck v. Dep't of Homeland Sec.*, 448 F.3d 524, 528 (2d Cir. 2006) (quoting *Chen*, 417 F.3d at 271).

We review factual findings for substantial evidence. *Id.* By statute, this standard is highly deferential, and "administrative findings of fact are conclusive

⁶ These arguments are, in any event, also unmeritorious.

⁷ The BIA independently analyzed the two grounds on which the first IJ ruled (that Dziedziach's conviction involved moral turpitude and that it met the INA's time requirements). We therefore need only consider the second IJ's decision.

unless any reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B); see *Majidi v. Gonzales*, 430 F.3d 77, 79 (2d Cir. 2005). But legal conclusions we review *de novo*. See *Dale v. Barr*, 967 F.3d 133, 138 (2d Cir. 2020). Whether a crime involves moral turpitude is a question of law. See *Jang v. Garland*, 42 F.4th 56, 59 (2d Cir. 2022). And “questions of law [are] for courts to decide, exercising independent judgment.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 387 (2024). In appropriate circumstances, we may afford “due respect to Executive Branch interpretations of federal statutes,” but courts must continue to exercise independent judgment. *Id.* at 385.

II

We turn first to Dziedziach’s argument that he was not convicted of a crime involving moral turpitude. The portion of 18 U.S.C. § 1513(b) that Dziedziach conspired to violate imposes criminal penalties on any person who “knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for . . . the attendance of a witness or party at an official proceeding” 18 U.S.C. § 1513(b). No Court of Appeals has yet addressed whether witness retaliation convictions pursuant to § 1513(b) are crimes

involving moral turpitude under § 1227(a)(2)(A)(i) of the INA. But the legal path to answering the question is well trodden.

In determining whether a crime involves moral turpitude, we employ the so-called “categorical approach,” where the focus is on “the intrinsic nature of the offense rather than on the factual circumstances surrounding any particular violation.”⁸ *Gill v. Immigr. & Naturalization Serv.*, 420 F.3d 82, 89 (2d Cir. 2005) (quoting *Dalton v. Ashcroft*, 257 F.3d 200, 204 (2d Cir. 2001)); see *Pereida v. Wilkinson*, 592 U.S. 224, 233 (2021). Under the categorical approach, we “presume that a conviction rests on nothing more than the minimum conduct required to secure a conviction.” *Pereida*, 592 U.S. at 236; see *Moncrieffe v. Holder*, 569 U.S. 184, 191 (2013). Thus, we look only at the elements of the statutory offense to determine

⁸ Where a crime is divisible, we employ the modified categorical approach. *Harbin v. Sessions*, 860 F.3d 58, 64 (2d Cir. 2017); see *id.* (distinguishing between a divisible statute, which “lists elements in the alternative,” and an indivisible statute, which “creates only a single crime, but . . . may ‘spell[] out various factual ways,’ or ‘means,’ ‘of committing some component of the offense’” (alteration in original) (quoting *Mathis v. United States*, 579 U.S. 500, 506 (2016))). We continue to treat § 1513(b) as indivisible with respect to its conduct portion (bodily injury, property damage, threats of bodily injury, threats of property damage). As we explained in our previous remand order, “the relevant ‘means’ for a conviction is conduct which causes (or threatens to cause) ‘bodily injury’ or tangible property damage,” *Dziedziach*, 799 F. App’x at 72, and neither *Dziedziach* nor the Government challenges this determination. Whether § 1513(b) is divisible with respect to the different reasons for retaliation listed in paragraphs (1) and (2), see *supra* note 4, is a question we need not address today, since neither party suggests that this question is relevant to the disposition of the present case.

whether it “necessarily . . . or categorically” involves moral turpitude. *Pereida*, 592 U.S. at 233; see *Mendez v. Mukasey*, 547 F.3d 345, 348 (2d Cir. 2008).

The BIA has long defined a crime involving moral turpitude as “encompass[ing] conduct that shocks the public conscience as being inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.” *Mendez v. Barr*, 960 F.3d 80, 84 (2d Cir. 2020) (quoting *Rodriguez v. Gonzales*, 451 F.3d 60, 63 (2d Cir. 2006)). The BIA has further explained that the act must be “*per se* morally reprehensible and intrinsically wrong or *malum in se*, so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude.” *Id.* (quoting *Rodriguez*, 451 F.3d at 63). As required at the time under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), we deferred to the BIA’s reasonable interpretation and adopted this precise definition. See *Rodriguez*, 451 F.3d at 63.

But our understanding of moral turpitude, which aligns with the BIA’s, long predates the agency definition and now-defunct *Chevron* deference. The statutory provision calling for removal in cases of post-admission crimes involving moral turpitude dates back more than a century, to the Immigration Act of 1917.

See Pub. L. No. 64-301, § 19, 39 Stat. 874, 889 (providing for deportation of “any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States”). And twenty years after the Immigration Act of 1917 was enacted, we had occasion to interpret its moral turpitude provision. Applying what was, in essence, the categorical approach to a New York criminal statute, we held that the offense must be “‘necessarily,’ or ‘inherently,’ immoral” to trigger the statutory provision for the removal of aliens who are convicted of crimes in the years following their admission. *United States ex rel. Guarino v. Uhl*, 107 F.2d 399, 400 (2d Cir. 1939) (L. Hand, J.) (citations omitted).

More recently, we afforded *Chevron* deference to the BIA’s conclusion that a crime involving moral turpitude “requires two essential elements: reprehensible conduct and a culpable mental state.” *Mota v. Barr*, 971 F.3d 96, 99 (2d Cir. 2020) (quoting *Matter of Silva-Trevino*, 26 I. & N. Dec. 826, 834 (B.I.A. 2016)); see also *Jang*, 42 F.4th at 60. While both conduct and mental state are relevant, however, “we have observed that ‘the focus of the analysis is generally on the mental state reflected in the statute,’ because ‘it is in the intent that moral turpitude inheres.’”

Jang, 42 F.4th at 60 (quoting *Efstathiadis v. Holder*, 752 F.3d 591, 595 (2d Cir. 2014)); see also *Mukasey*, 547 F.3d at 347 (“Whether a crime is one involving moral turpitude depends on ‘the offender’s evil intent or corruption of the mind.’” (quoting *In re Serna*, 20 I. & N. Dec. 579, 581 (B.I.A. 1992))); *Michel v. Immigr. & Naturalization Serv.*, 206 F.3d 253, 263 (2d Cir. 2000) (“[C]orrupt scienter is the touchstone of moral turpitude.”).

To the extent these more recent cases interpreting the INA’s removal provision deferred to BIA definitions of moral turpitude, they are consistent with our pre-*Chevron* caselaw interpreting the same statutory language. And post-*Chevron* decisions remain entitled to *stare decisis* effect, unless and until we overrule them.⁹ See *Garcia Pinach v. Bondi*, 147 F.4th 117, 121 (2d Cir. 2025). *Loper Bright*, the Supreme Court explained, “do[es] not call into question prior cases that relied on the *Chevron* framework.” 603 U.S. at 412. “The holdings of those cases that specific agency actions are lawful . . . are still subject to statutory *stare decisis* despite our change in interpretive methodology,” the Court added. *Id.*

⁹ In general, only this Court sitting *en banc* or the Supreme Court can overrule a prior panel decision. See *Dale*, 967 F.3d at 142 (citation omitted). However, where an intervening Supreme Court decision has “broken the link on which we premised our prior decision, or undermined an assumption of that decision,” a panel can reconsider the prior decision. *Id.* at 142–43 (citation omitted).

To be sure, the Supreme Court did not expressly state that this rule applies to circuit court *stare decisis* (nor did it expand on what constitutes the holding of a case). However, we and other circuits have long treated Supreme Court commands about *stare decisis* as applicable to circuit court *stare decisis*, and “we are chary of drawing” a distinction, absent contrary direction from the Supreme Court. *Garcia Pinach*, 147 F.4th at 132; see Amy Coney Barrett, *Statutory Stare Decisis in the Courts of Appeals*, 73 GEO. WASH. L. REV. 317, 328–29 (2005) (“Generally speaking, the circuits that have adopted the presumption have simply assumed without question that since the presumption applies in the Supreme Court, it must apply in the courts of appeals as well.”); *General Dynamics Corp., Elec. Boat Div. v. Benefits Rev. Bd.*, 565 F.2d 208, 212 (2d Cir. 1977) (applying a previous Supreme Court *stare decisis* pronouncement). To the limited extent, moreover, that we have deferred to the BIA’s interpretation of “a crime involving moral turpitude” in past cases—for instance, by interpreting this phrase to reach only those crimes requiring both reprehensible conduct and a culpable mental state—the BIA’s interpretation has been consistent with our earlier case law and is persuasive on independent analysis.

This understanding of *Loper Bright*'s application to our CIMT jurisprudence is consistent with that of our sister circuits in the same context of considering the meaning of a crime involving moral turpitude. See *Chavez v. Bondi*, 134 F.4th 207, 213 (4th Cir. 2025) ("In other words, *Loper Bright* doesn't wipe away the results of our prior decisions deferring to the Board's reasonable interpretations of what constitutes a crime involving moral turpitude. But it does mean that any Board guidance serves only as persuasive authority."); *Murillo-Chavez v. Bondi*, 128 F.4th 1076, 1086–87 (9th Cir. 2025) ("[O]ur holdings 'that *specific* agency actions are lawful' were not overruled by *Loper Bright* simply because they relied on *Chevron*.'" (quoting *Loper Bright*, 603 U.S. at 412)). We therefore continue to apply the two-part definition of a crime involving moral turpitude—*i.e.*, crimes involving both reprehensible conduct and a culpable mental state—in our categorical analysis moving forward.

A

As an initial matter, where a conviction is for the inchoate offense of conspiracy, our categorical analysis focuses on the question whether the underlying substantive offense—in this case, § 1513(b)—is a CIMT. See *Jang*, 42 F.4th at 61; *Santana-Felix v. Barr*, 924 F.3d 51, 54 (2d Cir. 2019). Dziedziach argues

that the removability provisions of 8 U.S.C. § 1227(a)(2)(A)(i) do not encompass inchoate offenses. He contends that we should no longer defer to the BIA's holding in *Matter of Vo*, 25 I. & N. Dec. 426 (B.I.A. 2011), that 8 U.S.C. § 1227(a)(2)(A)(i) reaches inchoate offenses. We disagree with his argument on its merits.

First, our precedent applying the categorical approach to the underlying substantive offense in determining whether an inchoate offense constitutes a CIMT does not appear to defer to *Matter of Vo*. Neither *Jang* nor *Santana-Felix* cites to it, or to other pertinent BIA decisions.¹⁰

Second, whether or not cases like *Jang* and *Santana-Felix* “relied on the *Chevron* framework,” their holdings regarding inchoate offenses are subject to *stare decisis* unless and until overruled, for the reasons already explained.¹¹ *Loper*

¹⁰ *Santana-Felix* cites *Mizrahi v. Gonzales*, 492 F.3d 156, 161 (2d Cir. 2007), for the proposition that an inchoate crime requires intent to commit the underlying substantive crime. *Santana-Felix*, 924 F.3d at 54. Although *Mizrahi* relied on *Chevron* deference in some portions of its analysis, the portion relevant to the citation in *Santana-Felix* neither references nor depends on *Chevron*.

¹¹ We will assume *arguendo* that the holdings of these precedents encompass reasoning that is relevant here. *Jang* involved ineligibility for cancellation of removal (under 8 U.S.C. §§ 1182(a)(2)(A)(i) and 1229b(b)(1)(C)) for *attempted* crimes involving moral turpitude, not conspiracy to commit those crimes. *Jang*, 42 F.4th at 60–61. And *Santana-Felix* addressed removal for conspiracies under the INA's aggravated felony provision, not removal for conspiracies under § 1227(a)(2)(A)(i)'s moral turpitude

Bright, 603 U.S. at 412. Dziedziach has not persuaded us to abandon these precedents: he offers “[m]ere reliance on *Chevron*,” but “[t]hat is not enough to justify overruling a statutory precedent.” *Id.*

Finally, we reject Dziedziach’s contention that reading § 1227(a)(2)(A)(i) to include inchoate offenses such as conspiracy is “contrary to the plain language of this provision.” Reply Br. at 6. Section 1227 provides, in relevant part, for the removal of a subset of aliens who have been “convicted of a crime involving moral turpitude” not long after admission to the United States. 8 U.S.C. § 1227(a)(2)(A)(i)(I). This plain language does not exclude conspiracies, which are often *more* depraved than the underlying substantive crimes that they implicate, given that co-conspirators *agree* on an unlawful objective, and thus act with a high degree of scienter. *Cf. Callanan v. United States*, 364 U.S. 587, 593 (1961) (“[C]ollective criminal agreement—partnership in crime—presents a greater potential threat to the public than individual delicts.”).

Dziedziach does not contend otherwise, arguing only that because Congress *expressly* provided in § 1182(a)(2)(A)(i)(I) for the *inadmissibility* of aliens convicted of conspiracy to commit a CIMT, § 1227(a)(2)(A)(i) should be read to exclude

provision. *Santana-Felix*, 924 F.3d at 54.

conspiracy convictions as a basis for removal. We disagree. The language on which Dziedziach relies was part of a later law that amended § 1182 while leaving untouched the provisions of § 1227(a)(2)(A). See Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, § 203(a), 108 Stat. 4305, 4311. We do not conclude from this amendment that Congress was modifying § 1227's otherwise clear text, because "later enacted laws . . . do not declare the meaning of earlier law." *Almendarez-Torres v. United States*, 523 U.S. 224, 237 (1998).

B

We turn next to the question whether the elements of witness retaliation under 18 U.S.C. § 1513(b), the underlying substantive offense, categorically require moral turpitude, as previously defined. This inquiry is less complicated by the deference issue. Even under the regime of agency deference, "[b]ecause the BIA has no particular expertise in construing federal and state criminal statutes, we review[ed] *de novo* the BIA's finding that a particular crime of conviction falls within its definition of a CIMT." *Rodriguez*, 451 F.3d at 63 (citations omitted). We have not previously decided whether conspiracy to retaliate against a witness or informant in violation of 18 U.S.C. § 1513(b) and (f) constitutes a crime involving

moral turpitude. Nor has any other circuit, to our knowledge. For the reasons set forth herein, we conclude that such conspiracies involve moral turpitude and that they do so categorically.

* * *

Section 1513(b) prohibits: (1) knowingly engaging in conduct that caused, or threatened to cause, another person bodily injury or property damage (2) with the specific intent to retaliate against a person for the participation of a witness or party in an official proceeding or for the provision of information relating to possible unlawful conduct to a federal law enforcement officer. 18 U.S.C. § 1513(b); see *United States v. Draper*, 553 F.3d 174, 179–80 (2d Cir. 2009) (Sotomayor, J.) (explaining that “law enforcement officer” is defined as “an officer or employee of the Federal Government, or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an advisor or consultant . . . authorized under law to engage in or supervise the prevention, detection, investigation, or prosecution of an offense” (quoting 18 U.S.C. § 1515(a)(4))). Dziedziach argues that this offense does not categorically involve moral turpitude principally on the theory that the *conduct* it prohibits—the

statute's *actus reus*—is not categorically reprehensible.¹² But we begin with the statute's *mens rea* requirement.

At the start, one of the two requirements in our case law for a crime to involve moral turpitude—and generally “the focus of the analysis,” *Jang*, 42 F.4th at 60 (citation omitted)—is a “culpable mental state.” *Mota*, 971 F.3d at 99 (citation omitted).¹³ Section 1513(b) requires the perpetrator to act “knowingly.” 18 U.S.C. § 1513(b). Awareness of the prohibited consequence of an act is ordinarily a prerequisite to a conclusion that it is a CIMT. *See Gill*, 420 F.3d at 89; *Mota*, 971 F.3d at 99. Moreover, the *mens rea* element here has a specific intent requirement that constitutes an aggravating feature: the perpetrator must act

¹² Dziedziach does argue briefly that the BIA departed from “the plain language of the statute” by erroneously framing § 1513(b)’s *mens rea* requirement as “an intent to interfere with official proceedings,” as opposed to an intent to retaliate for participating in such proceedings, and that it then relied on this misreading of the statutory language to conclude that the offense is a CIMT. Dziedziach Br. at 32 (quoting CAR at 8). We disagree. The BIA repeatedly described the *mens rea* element as an intent to retaliate and, as the Government contends, appears only to have alluded to interference with official proceedings in “an off-handed reference to an intent to retaliate.” Gov’t Br. at 29–30 (citing CAR at 7). In any event, the point is not germane, given our *de novo* conclusion, *infra*, that § 1513(b) includes a culpable *mens rea* element.

¹³ *Jang* and *Mota* reference BIA decisions but remain good law for the reasons discussed above. Nor does Dziedziach ask us to revisit them in his post-*Loper Bright* reply brief, even though he notes that *Loper Bright* “eliminates deference to Board decisions relevant to this case.” Reply Br. at 2.

“with intent to retaliate against any person” for participation in official proceedings or for information provided to law enforcement. 18 U.S.C. § 1513(b).

The second requirement for a crime to involve moral turpitude is “reprehensible conduct.” *Mota*, 971 F.3d at 99 (citation omitted). “A crime involves reprehensible conduct if that conduct is ‘inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.’” *Id.* (quoting *Mendez v. Barr*, 960 F.3d at 84). As noted above, the categorical approach looks to “the minimum conduct required to secure a conviction.” *Pereida*, 592 U.S. at 236. We agree with *Dziedziach* that the least of the acts criminalized by § 1513(b) involves threatening to damage a person’s property. *See Dziedziach Br.* at 31. But, given the context of the provision as a whole, this act must be done in retaliation for participation in an official proceeding or cooperation with law enforcement).

Here, *Dziedziach* argues that on its face, § 1513(b) reaches threats to property and that such conduct is insufficiently reprehensible to qualify as a crime involving moral turpitude. He acknowledges that the subdivision of § 1513(b) to which he pled guilty criminalizes threats to property that are made “with intent to retaliate against any person for . . . the attendance of a witness or party at an

official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding.” 18 U.S.C. § 1513(b)(1). But Dziedziach suggests that this does not matter because the conduct element must be analyzed apart from any aggravating factor associated with *mens rea*, lest a crime be “pushed over the CIMT threshold by mens rea alone.” Dziedziach Br. at 32. We disagree.

The threatened use of violence to retaliate against a person for being a witness or a party to legal proceedings, for producing evidence in such proceedings, or for providing information to law enforcement, endangers court administration and our system of justice. We have described § 1513’s purpose as “preserv[ing] the public interest by safeguarding the administration of justice, and protect[ing] individual witnesses anxious to come forward with potentially incriminating evidence.” *United States v. Brown*, 937 F.2d 32, 33 (2d Cir. 1991). This Court has also noted that Congress drafted § 1513 to protect society’s morale from threats of violence. *Id.* (“The threat of violence prevailing in our society has proven as destructive to its morale as the commission of retaliatory acts themselves. Aware of this, Congress drafted [§ 1513] with the express purpose of deterring offenders”)

Thus, even a threat of minimal property damage, if done for the purpose of retaliating against a witness, party, or any individual participating in official proceedings or seeking to provide information to law enforcement about possible violations of law, interferes with the “administration of justice” and “our society[‘s] . . . morale.” *Id.* In other words, such conduct is necessarily directed not just at an individual or their property, but at the justice system itself, and is thus “inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.” *Mota*, 971 F.3d at 99 (quoting *Mendez v. Barr*, 960 F.3d at 84).

Insisting otherwise, Dziedziach argues that the specific retaliatory intent required in the commission of § 1513(b) is not relevant in evaluating the reprehensibility of its prohibited conduct and may be considered *only* as part of the *mens rea* inquiry. He contends that the BIA has previously relied on aggravating factors in concluding that prohibited conduct is reprehensible only when such factors relate to the conduct itself, such as when the use of a deadly weapon in the commission of an assault renders that crime a CIMT. But the BIA’s decision in *Matter of Ahortalejo-Guzman*, on which Dziedziach relies, does not cabin the consideration of aggravating factors to either the *actus reus* or *mens rea* analysis.

25 I. & N. Dec. 465, 466 (B.I.A. 2011) (noting that assault offenses may involve moral turpitude where there is “some aggravating factor that indicates the perpetrator’s moral depravity, *such as* the use of a deadly weapon or the infliction of serious injury on a person whom society views as deserving of special protection” (emphasis added)). And the BIA has elsewhere indicated that “the need for, and the nature of, any aggravating factor is affected by the mental state required for the conviction.” *In re Solon*, 24 I. & N. Dec. 239, 244–45 (B.I.A. 2007) (“[T]he inclusion of the specific intent element distinguishes third-degree assault under . . . the New York Penal Law from the general-intent simple assaults, which are not considered to involve moral turpitude.”).

On independent analysis, we agree with the BIA. As discussed earlier, we have repeatedly held that intent is the focus of the moral turpitude inquiry. *See, e.g., Jang*, 42 F.4th at 60 (“It is in the intent that moral turpitude inheres.” (citation omitted)). And we discern no basis for assessing the reprehensibility of an individual’s actions without reference to an aggravating feature, as here, that illuminates the individual’s purpose. This approach, moreover, aligns with other circuits’ conclusions that the intent and conduct factors in the CIMT inquiry contribute to an overall assessment of the moral quality of an offense and are not

separate minimums. *See, e.g., Moran v. Barr*, 960 F.3d 1158, 1162 (9th Cir. 2020) (“With respect to the mens rea, the greater the requisite state of mind, the less serious the resulting harm has to be in order for the crime to be classified as one involving moral turpitude.”).¹⁴ We reject Dziedziach’s argument to the contrary and conclude that § 1513(b) is categorically a CIMT.

III

Dziedziach next argues that the CIMT provision in § 1227(a)(2)(A)(i) is unconstitutionally vague except as to fraud offenses, where this Court and the Supreme Court have held it is not void for vagueness. *See Dziedziach Br.* at 34 (citing *Vasquez v. Garland*, 80 F.4th 422 (2d Cir. 2023)); *Jordan v. De George*, 341 U.S. 223, 232 (1951) (concluding that “[w]hatever else the phrase ‘crime involving moral turpitude’ may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude”). A statute is unconstitutionally vague—and thus

¹⁴ *See also Da Silva Neto v. Holder*, 680 F.3d 25, 32–33 (1st Cir. 2012) (applying *Chevron* deference and finding neither arbitrary nor contrary to law a BIA decision that a malicious-destruction-of-property statute that did “not require any risk of physical harm to another person, which can render conduct inherently reprehensible,” was nevertheless a CIMT because it required “an intentional, destructive act committed with malice (that is to say, out of cruelty, hostility, or revenge) toward an individual”).

violates the Due Process Clause—if it “fails to give ordinary people fair notice of the conduct it punishes, or [is] so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015). Because of the “the grave nature of deportation,” the same “exacting vagueness standard” applies to both criminal cases and immigration removal provisions. *Sessions v. Dimaya*, 584 U.S. 148, 156–57 (2018) (citation omitted). For the reasons set forth here, we reject Dziedziach’s argument and conclude that the term “crime involving moral turpitude” is not unconstitutionally vague as applied in this case.¹⁵

At the start, in assessing as-applied vagueness challenges, we ask whether the provision at issue “provide[s] (A) sufficient notice and (B) limits on the discretion of law enforcement authorities[.]” *Arriaga v. Mukasey*, 521 F.3d 219, 224 (2d Cir. 2008) (citing *Kolender v. Lawson*, 461 U.S. 352, 357 (1983)).¹⁶ Even in the absence of such limits, moreover, an as-applied vagueness challenge fails where “the conduct at issue falls within the core of the statute’s prohibition.” *United*

¹⁶ While our decision in *Arriaga* predated the Supreme Court’s ruling in *Johnson*, our framing of the void for vagueness analysis there is consistent with *Johnson*, which also relies on the Supreme Court’s earlier decision in *Kolender* in focusing on both fair notice and preventing arbitrary enforcement. *Johnson*, 576 U.S. at 595.

States v. Farhane, 634 F.3d 127, 139 (2d Cir. 2011) (citation omitted). That is because, in those circumstances, we can confidently say that enforcement of the statutory provision against a defendant’s conduct “‘was not the result of the unfettered latitude that law enforcement officers and factfinders might have in other, hypothetical applications of the statute.’” *Id.* at 139–40 (citation omitted).

Undoubtedly, Dziedziach was on notice that witness retaliation involves moral turpitude. Clearly Dziedziach’s own conduct—hiring an individual to intimidate plaintiffs into dropping a lawsuit, for instance, where that individual tossed acid on a plaintiff’s girlfriend—easily “shocks the public conscience as being inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.” *Mendez v. Barr*, 960 F.3d at 84 (citation omitted). The categorical approach, however, demands that Dziedziach had fair notice that his *generic* offense categorically involves moral turpitude, not that his specific conduct did. We conclude that this requirement is met.

Dziedziach argues simply that the phrase “crime involving moral turpitude” is hopelessly unclear, such that an ordinary person would not know

that witness retaliation was turpitudinous.¹⁷ To be sure, no Court of Appeals has yet said that federal witness retaliation involves moral turpitude: we are the first to address the question. But, as we discussed above, the minimum conduct criminalized by § 1513(b)—threatening to damage an individual’s property with the intent to retaliate for participation in official proceedings or for information provided to law enforcement—falls squarely within our longstanding reading of moral turpitude as an offense that is “‘necessarily,’ or ‘inherently,’ immoral.” *Uhl*, 107 F.2d at 400 (citations omitted). Given the role of § 1513 in “preserv[ing] the public interest by safeguarding the administration of justice,” *Brown*, 937 F.2d at 33, we conclude that a reasonable person would have been on notice that conduct in violation of its terms is “inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.” *Mendez v. Barr*, 960 F.3d at 84 (citation omitted).

As for limits on enforcement discretion, we are doubtful that the CIMT provision, as applied to § 1513(b) and (f), is so standardless as to invite arbitrary enforcement. See *Arriaga*, 521 F.3d at 224, 228. But even assuming *arguendo* that

¹⁷ He does not contend that § 1513(b) itself is unconstitutionally vague or that he otherwise lacked notice that violations of it are criminal.

Dziedziach could prevail on this argument, his as-applied vagueness challenge would still fail because the minimum conduct criminalized, both retaliatory and threatening to the administration of justice, falls within the core of the immoral conduct prohibited by the statute. *Cf. Farhane*, 634 F.3d at 139.

In sum, and as applied to his conviction pursuant to § 1513(b) and (f), Dziedziach does not show that the INA's moral turpitude provision violates the vagueness doctrine's mandates. Accordingly, his constitutional vagueness challenge fails.

IV

Finally, Dziedziach reiterates in the present petition for review earlier arguments that have already been determined to be without merit. For the reasons set forth below, we decline to consider these arguments again.

Dziedziach argues that he established his eligibility for CAT relief and for a § 1182(h) hardship waiver, and that the BIA erred in determining that his crime was committed within five years of admission. But Dziedziach raised the same arguments in his first petition, and we rejected them then. Specifically, we said that while “we take no position on the validity of Dziedziach's arguments regarding the unconstitutional vagueness of the ‘crime involving moral turpitude’

standard or whether 18 U.S.C. § 1513(b) is not categorically a CIMT under a proper definition of that phrase,” we find his “remaining arguments . . . to be without merit.” *Dziedziach*, 799 F. App’x at 72.

We decline to consider these claims now pursuant to the law of the case doctrine. Under the law of the case, “when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988) (citation omitted). It “ordinarily forecloses relitigation of issues expressly or impliedly decided by the appellate court.” *Field v. United States*, 381 F.3d 109, 114 (2d Cir. 2004) (citation omitted). Here, we previously considered and rejected Dziedziach’s timing, CAT, and § 1182 waiver arguments, so the doctrine applies.

To be sure, the doctrine is discretionary, and we can depart from it for various reasons, including “[1] an intervening change of controlling law, [2] the availability of new evidence, or [3] the need to correct a clear error or prevent manifest injustice.” *United States v. Tenzer*, 213 F.3d 34, 39 (2d Cir. 2000) (quoting *Doe v. N.Y.C. Dep’t of Soc. Servs.*, 709 F.2d 782, 789 (2d Cir. 1983)). But Dziedziach has not demonstrated a compelling reason justifying reconsideration. He points primarily to *Loper Bright*, arguing that the case “represents new authority allowing

this Court to consider the ‘admission’ issue anew without deference to the Board.”¹⁸ Reply Br. at 3. But we did not invoke *Chevron* in rejecting Dziedziach’s claim to have been admitted in 1999, more than five years prior to his criminal offense. And in any event, *Loper Bright* disclaimed “call[ing] into question prior cases that relied on the *Chevron* framework.” 603 U.S. at 412. Just as “[m]ere reliance on *Chevron* cannot constitute a ‘special justification’ for overruling” such cases, *id.* (quoting *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 266 (2014)), mere reliance on *Chevron* cannot constitute a compelling reason for departing from the law of the case.

As for the other grounds justifying reconsideration, Dziedziach has not argued that any “new evidence” is available. *Tenzer*, 213 F.3d at 39. Nor do we discern any clear error or manifest injustice requiring correction. Indeed, were we to consider Dziedziach’s claims anew, we would again reject them on the merits.

¹⁸ Dziedziach also briefly invokes *Nasrallah v. Barr*, in which the Supreme Court held that an agency decision denying CAT relief is not subject to the jurisdictional bar in 8 U.S.C. § 1252(a)(2)(C). 590 U.S. 573, 576, 579 (2020). He argues that *Nasrallah* constitutes an intervening change of controlling law justifying reconsideration of his CAT claim. This argument fails, however, because, based on the plain text of the statute, § 1252(a)(2)(C) was inapplicable in Dziedziach’s circumstances even *before Nasrallah* was decided.

Finally, Dziedziach argues that we improperly disposed of his first petition by remanding to the BIA, entitling him to relief on his second. We disagree. The proper way to challenge the propriety of the remand order was a petition for rehearing or a petition for *certiorari*. Dziedziach availed himself of both, raising the remand argument in petitions for rehearing and for a writ of *certiorari*, which we and the Supreme Court denied. Or., *Dziedziach v. Barr*, No. 17-1471 (2d Cir. Aug. 11, 2020); *Dziedziach v. Wilkinson*, 141 S. Ct. 1501 (2021). Dziedziach cannot raise this challenge again four years later in a subsequent petition for review in the same litigation. Nor do we discern any merit in his argument that remand was impermissible.

CONCLUSION

We have considered Dziedziach's remaining arguments and conclude that they, too, are without merit. For the foregoing reasons, we **DENY** Dziedziach's petition for review.