

U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-1101

SOFIQL ISLAM,
Petitioner

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

On Petition for Review of a Decision of
the Board of Immigration Appeals
Immigration Judge Richard Bailey, No. A060-503-943

Before: KRAUSE, PHIPPS, and CHUNG, *Circuit Judges*
Argued Dec. 11, 2025; Filed Oct. 14, 2026

OPINION OF THE COURT

KRAUSE, *Circuit Judge*. Sofiqul Islam invites us to disregard our prior interpretation of the phrase “sexual abuse of a minor” in the Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(43)(A), in view of the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). We decline. The full implications of *Loper Bright* on our Court’s interpretation of federal statutes have yet to be determined, but one thing is already clear: While *Loper Bright*

has prohibited us from applying *Chevron* deference to agencies' interpretations of ambiguous statutory provisions going forward, *see Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), it also sought to minimize disruption to existing precedent which already applied that deference. Our precedent controls here and forecloses Islam's arguments that the New York statute under which he was convicted for second-degree sexual abuse criminalizes a broader range of conduct than the federal generic offense of sexual abuse of a minor. For that reason, and because Islam's other claims of error are unavailing, we will dismiss in part and deny in part his petition for review.

I. FACTUAL AND PROCEDURAL HISTORY

A. Life in Bangladesh and Entry into the United States¹

Islam is a 43-year-old national of Bangladesh who was admitted to the United States as a lawful permanent resident in 2009. As a teenager, Islam joined the Bangladesh Nationalist Party (BNP), one of the country's two biggest political parties. He regularly attended meetings for BNP members and volunteered to help organize BNP rallies, distribute leaflets,

¹ The Immigration Judge (IJ) found Islam to be credible. The following facts are drawn from the record and Islam's testimony, which the IJ found "would be sufficient for him to meet his burden of proof." A.R. 122.

and undertake outreach with community members, among other activities.

During periods when the BNP has been out of power in Bangladesh, its leaders have been targeted with detention and “false or trumped-up charges,” App. 12, and its members have faced harassment, threats, and violence, including at the hands of supporters and members of the BNP’s rival political party, the Awami League. That was Islam’s experience when he attended three BNP rallies in 1998 at which Awami League members threw Molotov cocktails and smoke bombs into the crowd, and stabbed, shot, and beat attendees. Other than some minor cuts he sustained when fleeing the rallies, Islam was not personally harmed by Awami League members, nor was he arrested or detained while living in Bangladesh. Yet by 2009, Islam nevertheless decided that he “could no longer live a normal life in Bangladesh as an active BNP member.” A.R. 227 ¶ 6. He then immigrated to New York to join his wife, a U.S. citizen whom he had married in 2006 and with whom he has two children who are also U.S. citizens.

B. Islam’s Conviction and Removal Proceedings

In May 2022, Islam was arrested and pleaded guilty to one count of misdemeanor sexual abuse in the second degree under New York Penal Law (NYPL) § 130.60(2), which prohibits “sexual contact” with a person “[l]ess than fourteen years old.” Islam was sentenced to 364 days in jail. This was his first arrest and criminal charge.

At the conclusion of his sentence, the Department of Homeland Security apprehended Islam and served him with a Notice to Appear, which, as relevant here, charged him as removable on the basis that his New York conviction constituted an aggravated felony under the INA—specifically, the sexual abuse of a minor predicate offense. *See* 8 U.S.C. § 1101(a)(43)(A). Although Islam disputed that his conviction rendered him removable under the INA, the Immigration Judge (IJ) denied his motion to terminate on that basis and sustained the charge of removability. The IJ’s opinion cited a Second Circuit opinion and one of our nonprecedential opinions, both of which concluded that Islam’s statute of conviction, NYPL § 130.60(2), was a categorical match for the aggravated felony of sexual abuse of a minor under the INA. *See* A.R. 426 (citing *Debique v. Garland*, 58 F.4th 676 (2d Cir. 2023); *Reyes v. Att’y Gen.*, No. 22-1493, 2023 WL 2184831 (3d Cir. Feb. 23, 2023)).²

² In addition to the aggravated felony charge, Islam’s Notice to Appear charged him as removable based on a conviction of a crime of child abuse, neglect, or abandonment under 8 U.S.C. § 1227(a)(2)(E)(i), and for a crime of moral turpitude under 8 U.S.C. § 1227(a)(2)(A)(i). In the IJ’s written decision, he declined to sustain the latter charge of removability and did not reach the question of whether Islam was removable for a child abuse, neglect, or abandonment conviction. Yet in the IJ’s oral decision, he incorrectly stated that he had, in fact, sustained the child abuse, neglect, or abandonment charge of removability.

Islam also sought relief from removal under the Convention Against Torture (CAT) on the grounds that if he were returned to Bangladesh he would (1) resume his participation in the BNP and likely be attacked for his political activities and (2) be severely harmed or shot because he would have no place to take shelter during curfews imposed in July 2024 by the Bangladeshi authorities, who had ordered that violators be shot on sight.³

Following a merits hearing, the IJ issued a decision finding Islam credible but denying him CAT relief. The IJ acknowledged that the Awami League was still in power in Bangladesh and had continued to target BNP members and leaders, as well as other civilians, leading up to and after the January 2024 elections, through baseless arrests, detentions, and prosecutions; violent crackdowns on protests; internet shutdowns; and the nighttime curfews. Nonetheless, the IJ denied CAT relief because Islam failed to present sufficient

The Board of Immigration Appeals (BIA) recognized that this was error and that the only sustained charge of removability was for an aggravated felony under 8 U.S.C. § 1227(a)(2)(A)(iii).

³ Initially, Islam also sought asylum and withholding of removal, but the IJ's finding that Islam's conviction was a categorical match for the sexual abuse of a minor aggravated felony rendered him ineligible for either form of relief. *See* 8 U.S.C. § 1231(b)(3)(B)(ii). Islam thus pursued only his CAT claim at his merits hearing.

evidence that he personally would be targeted for his involvement in the BNP or would be at risk of being shot or detained for violating the curfew.

C. Board of Immigration Appeals Proceedings

Islam appealed to the Board of Immigration Appeals (BIA) without success. He reiterated his argument that the underlying authorities on which the IJ relied to conclude his state conviction was a categorical match for the aggravated felony of sexual abuse of a minor were abrogated by *Loper Bright*. The BIA was unconvinced and affirmed the IJ's aggravated felony determination. It also upheld the IJ's denial of CAT relief, taking "administrative notice" of changes in the political landscape in Bangladesh since the IJ's decision, noting that Prime Minister Hasina of the Awami League had been ousted from power in August 2024 and replaced with interim Prime Minister and Nobel Peace Prize winner Muhammad Yunis, and that "current country conditions [had] greatly improved" under Yunis. App. 6. Islam timely filed this petition for review.

II. JURISDICTION AND STANDARD OF REVIEW

The BIA had jurisdiction pursuant to 8 C.F.R. § 1003.1(b). We have jurisdiction to review both claims Islam raises in his petition—that (1) his New York conviction is not an aggravated felony that renders him removable under the INA, and (2) the IJ and BIA erred in denying him CAT relief.

On the first claim, while we lack jurisdiction to review any final order of removal against a noncitizen who has committed an aggravated felony, *see* 8 U.S.C. § 1252(a)(2)(C), we retain jurisdiction over colorable “constitutional claims or questions of law raised upon a petition for review,” *id.* § 1252(a)(2)(D); *see also Pareja v. Att’y Gen.*, 615 F.3d 180, 186 (3d Cir. 2010). We review de novo the question of whether Islam’s offense of conviction is an aggravated felony, since it is “a purely legal question, and one that governs our own jurisdiction.” *Valansi v. Ashcroft*, 278 F.3d 203, 207 (3d Cir. 2002).

On Islam’s CAT claim, we retain jurisdiction over factual challenges to denials of CAT relief, which we review under the highly deferential substantial evidence standard. *Nasrallah v. Barr*, 590 U.S. 573, 583-84 (2020); *see id.* at 584 (explaining that the agency’s “findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary” (quoting 8 U.S.C. § 1252(b)(4)(B))).

Finally, because the BIA “invoke[d] specific aspects of the IJ’s analysis and factfinding in support of [its] conclusions” with respect to both the categorical analysis and the denial of CAT relief, we review both the BIA’s and IJ’s decisions. *See Oliva-Ramos v. Att’y Gen.*, 694 F.3d 259, 270 (3d Cir. 2012).

III. DISCUSSION

Sexual abuse of a minor is one of the crimes the INA designates as an “aggravated felony,” 8 U.S.C.

§ 1101(a)(43)(A), which renders a noncitizen removable if he commits that crime while living in the United States, *id.* § 1227(a)(2)(A)(iii). *See Cabeda v. Att’y Gen.*, 971 F.3d 165, 168 (3d Cir. 2020). Islam asserts in his petition for review that his New York criminal conviction is not a categorical match for the federal generic offense of sexual abuse of a minor, and, in the alternative, that he is entitled to relief from removal under CAT.⁴ As explained below, we disagree on both fronts. We will first address the question of Islam’s removability before turning to his application for relief under CAT.

⁴ We employ the categorical approach to review the agency’s determination that Islam’s New York conviction for second-degree sexual abuse qualifies as sexual abuse of a minor under the INA. *Moncrieffe v. Holder*, 569 U.S. 184, 190 (2013). Under this two-step approach, we first ascertain the federal generic definition of sexual abuse of a minor, and then we determine if conduct meeting that federal definition (and nothing more) is necessary to be convicted under NYPL § 130.60(2). *See id.*; *see also Shular v. United States*, 589 U.S. 154, 158 (2020). This approach demands that we “ignor[e] the particular facts of the case” and “focus solely on whether the elements of the crime of conviction sufficiently match the elements of [the] generic [federal offense].” *Mathis v. United States*, 579 U.S. 500, 504 (2016).

A. Sexual Abuse of a Minor as an Aggravated Felony Under the INA

Islam argues that his offense under New York law cannot render him removable because the statute of conviction is broader than the federal generic definition of sexual abuse of a minor, and thus a categorical mismatch, in three respects: (1) the state law criminalizes a wider range of sexual conduct than the federal generic definition; (2) the state law requires no age differential between perpetrator and victim, while the federal generic definition mandates a four-year age gap; and (3) the state law requires a less culpable mens rea (mere recklessness or criminal negligence suffices) than the federal generic definition, which requires a knowing or intentional mental state. As explained below, the first argument is foreclosed by our precedent, which we have no grounds to revisit; the second—though a matter of first impression for our Court—and the third are meritless.

1. Range of Proscribed Sexual Conduct

Islam offers two reasons why the range of conduct prohibited by the New York statute exceeds the range proscribed by the federal generic offense. First, he contends that the proscribed sexual acts in the federal generic offense should encompass only the narrow range of conduct proscribed in 18 U.S.C. § 2243(a)—which criminalizes “contact,” “penetration,” or “intentional touching, not through the clothing, of the genitalia of another person,” *id.* § 2246(2)—as opposed to the broader definition of sexual abuse of a child in

18 U.S.C. § 3509, a statute that enumerates child victims’ and witnesses’ rights in criminal cases and defines sexual abuse to include “the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children,” *id.* § 3509(a)(8). Though Islam recognizes that we rejected that argument in prior caselaw, he asserts that *Loper Bright* empowers us to cast aside that precedent. Second, he argues that even if the federal generic offense encompasses the proscribed conduct in § 3509(a)(8), the New York statute still sweeps more broadly. Neither argument is persuasive.

a. *Proscribed conduct in the federal generic offense*

Our Court has already considered what conduct is prohibited by the federal generic offense of sexual abuse of a minor, and we have rejected the definition in § 2243(a) twice over. In *Restrepo v. Attorney General*, we deferred to the BIA’s interpretation of the term “sexual abuse of a minor” in the INA, *see* 8 U.S.C. § 1101(a)(43), which drew on § 3509(a)(8). 617 F.3d 787, 792-97 (3d Cir. 2010) (citing *Matter of Rodriguez-Rodriguez*, 22 I. & N. Dec. 991 (BIA 1999)).⁵ The BIA chose § 3509(a)(8) as its benchmark for

⁵ The INA “does not expressly define sexual abuse of a minor,” *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 388 (2017), as

identifying what conduct amounts to sexual abuse of a minor after surveying federal statutes defining sexual abuse of a child, explicitly noting that § 3509(a)(8) was a better guide than § 2243(a). *See Rodriguez-Rodriguez*, 22 I. & N. at 996.

We then reaffirmed *Restrepo* in *Cabeda*, concluding that *Restrepo* was not abrogated by the Supreme Court’s intervening decision in *Esquivel-Quintana v. Sessions*, 581 U.S. 385 (2017). *See Cabeda*, 971 F.3d at 171. There, the Supreme Court eschewed *Chevron* deference and engaged in an independent statutory and constitutional analysis of the INA—specifically, to determine whether the federal generic definition of sexual abuse of a minor encompassed state statutory rape offenses criminalizing conduct based solely on

opposed to other aggravated felonies, which the INA defines by expressly cross-referencing criminal statutes, *see, e.g.*, 8 U.S.C. § 1101(a)(43)(B) (stating that 21 U.S.C. § 802 provides the definition of “illicit trafficking in a controlled substance”); *id.* § 1101(a)(43)(C) (stating that 18 U.S.C. § 921 provides the definition of “illicit trafficking in firearms or destructive devices”); *id.* § 1101(a)(43)(D) (making “laundering of monetary instruments,” at least beyond a monetary threshold and as defined in 18 U.S.C. §§ 1956 or 1957, an aggravated felony). Where, as here, the INA fails to define a specific aggravated felony, we turn to “the normal tools of statutory interpretation,” including consultation of other related federal statutes containing the same statutory term. *Esquivel-Quintana*, 581 U.S. at 391; *see also id.* at 393-94.

the participants' ages. *Esquivel-Quintana*, 581 U.S. at 388-89, 397-98. We acknowledged in *Cabeda* that there was "some tension" between the Supreme Court's approach in *Esquivel-Quintana* and our heavy reliance in *Restrepo* on the BIA's reading of the INA. *Cabeda*, 971 F.3d at 171. But we concluded, notwithstanding a concurrence that vigorously disagreed on this point, *see id.* at 185-99 (Krause, J., concurring in part and in the judgment), that the Supreme Court's shift to a "more searching and nuanced" methodology in *Esquivel-Quintana* did not undermine "the substantive conclusions reached in earlier cases," including *Restrepo*—at least not without more from the Court to "signal so dramatic a step," *id.* at 171-72 n.4 (majority opinion).

According to Islam, in the wake of *Loper Bright*, we are no longer bound by precedent that applied *Chevron* deference, which includes both *Restrepo* and *Cabeda*. We read *Loper Bright* differently. That opinion made explicit what we saw in *Cabeda* as being implicit in *Esquivel-Quintana*: We should decline to apply *Chevron* deference prospectively, but with respect to our existing precedent, "shifting interpretive methodologies" should not themselves be "viewed as carrying the force of stare decisis" or as overturning "our prior precedential decisions . . . to the extent they [afforded] broad *Chevron* deference to the BIA's interpretation of immigration statutes," *id.* To put a finer point on it, as the Supreme Court explicitly stated in *Loper Bright*, "we do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are

lawful . . . are still subject to statutory *stare decisis* despite our change in interpretive methodology,” and “[m]ere reliance on *Chevron* cannot constitute a special justification for overruling” those holdings. 603 U.S. at 412 (citation modified).

Loper Bright is not, as Islam would have it, susceptible to being read as only preserving a court’s application of an approved agency interpretation to a particular set of facts, in contrast with the court’s “adoption of agencies’ interpretations of law.” Reply Br. 8. Rather, the Supreme Court instructed lower courts in *Loper Bright* to continue treating the “holdings of those cases that specific agency actions are lawful” as subject to “statutory *stare decisis*,” 603 U.S. at 412—a term that generally refers to an opinion’s legal rules and interpretations, not just a “fact- and party-bound result,” *Bastias v. Att’y Gen.*, 158 F.4th 1188, 1196 (11th Cir. 2025) (Newsom, J., concurring in the judgment) (noting that *stare decisis* “dictates . . . which legal principle should apply” (citation modified) (quoting Bryan A. Garner et al., *The Law of Judicial Precedent* 374 (2016))). Indeed, the Court was explicit that it was not “call[ing] into question prior cases that relied on the *Chevron* framework,” and gave the “Clean Air Act holding of *Chevron* itself,” which is hardly a fact-specific holding, as one such example of a specific agency action. *Loper Bright*, 603 U.S. at 412.

At bottom, Islam is simply arguing that this Court should follow the approach of the *Cabeda* concurrence, which

the majority in that case rejected. In the absence of a ruling by this Court sitting *en banc* or an intervening Supreme Court decision that conflicts with that precedent, we are “bound by the precedential decisions of earlier panels,” *Virgin Islands v. Martinez*, 620 F.3d 321, 327 (3d Cir. 2010) (citing 3d Cir. I.O.P. 9.1), and *Loper Bright* does not change that calculus.⁶

⁶ Several circuits have explicitly agreed. *See, e.g., Garcia Pinach v. Bondi*, 147 F.4th 117, 120-21 (2d Cir. 2025) (determining “*Loper Bright* provides no basis to disregard” precedent that had deferred to the BIA’s interpretation of the INA); *Lopez v. Garland*, 116 F.4th 1032, 1045 (9th Cir. 2024) (concluding that the court was bound by a *Chevron*-era panel decision that deferred to the BIA’s interpretation of the INA); *Gutierrez-Mikan v. Att’y Gen.*, 163 F.4th 1331, 1335 n.2 (11th Cir. 2026) (“[T]he Supreme Court was clear that *Loper Bright* ‘did not call into question prior cases that relied on the *Chevron* framework.’” (quoting *Loper Bright*, 603 U.S. at 376)). And no Court of Appeals has definitively held that *Loper Bright* overrides the substantive conclusions of previous decisions that adopted an agency’s interpretation of a statute. The Sixth Circuit’s approach appears unsettled: For instance, it construed “specific agency action” narrowly in *In re MCP No. 185*, 124 F.4th 993, 1002-03 (6th Cir. 2025) (construing “specific agency action” to refer to a particular administrative ruling by the Federal Communications Commission, and holding that it was “not bound” by a prior case based on *Chevron* deference that had affirmed a different ruling by the

Even if we assumed for these purposes that *Loper Bright*'s overturning of *Chevron* did license us to reexamine past panels' decisions that were founded on *Chevron* deference, that would not lead us to a different outcome here. For one thing, *Restrepo* did not rely exclusively on *Chevron* and considered arguments beyond agency deference. The decision noted, for instance, that "the reasonableness of the BIA's resort to § 3509(a) to define 'sexual abuse of a minor' is rooted in the consonance between that statutory provision and

Commission), but interpreted "specific agency action" more broadly in *Tennessee v. Becerra*, 131 F.4th 350, 366 (6th Cir. 2025) (observing that a "'specific agency action' attaches to an agency's particular construction of a statute" (quoting *Loper Bright*, 603 U.S. at 376)), *cert. granted, judgment vacated, appeal dismissed as moot sub nom. Tennessee v. Kennedy*, --- S. Ct. ---, 2026 WL 135717, at *1 (Jan. 20, 2026). The Fourth Circuit expressed some concerns with reading *Loper Bright* to permit strict adherence to all precedent deferring to agencies' interpretation of statutes, because that would effectively lock in "the most recent agency interpretation that [a court] upheld before *Loper Bright*," and thus upset the pre-*Loper Bright* status quo where "agencies were, within certain bounds, permitted to change their interpretations of a statute." *Ozurumba v. Bondi*, 153 F.4th 396, 406 (4th Cir. 2025), *petition for cert. filed sub nom. Blanche v. Ozurumba*, No. 25-1343 (U.S. June 2, 2026). But the court left open the question of how to approach deferring to agencies' interpretations of statutes. *Id.*

the commonly accepted definition of ‘sexual abuse,’” 617 F.3d at 796; it clarified that defining the proscribed sexual contact in the federal generic offense in relation to § 3509(a)(8) was “consistent with principles of statutory construction,” was “a logical extension of our precedent,” and was in accord with sister circuit decisions, including several that did not apply *Chevron* deference, *id.* at 796-97; and it explained why § 2243(a) was not the proper referent for the federal generic offense, *id.* at 797-98.

For another, we see no independent “legal basis for departing from” *Restrepo, Abdulla v. Att’y Gen.*, 153 F.4th 342, 352 (3d Cir. 2025), that we did not already address and reject in *Cabeda*, *cf.* 971 F.3d at 189 (Krause, J., concurring in part and in the judgment) (identifying “five respects” in which *Restrepo* “misinterpreted or ignored key clues about § 1101(a)(43)’s meaning,” which the majority rejected); *see id.* at 189-92.

In sum, § 3509(a)(8), not § 2243(a), continues to be the “primary guide” for defining the conduct proscribed in the federal generic offense of sexual abuse of a minor. *Id.* at 172 (majority opinion). As explained below, Islam’s statute of conviction is not broader than that definition.

b. *The scope of the New York statute relative to § 3509(a)(8)*

The New York statute under which Islam was convicted of second-degree sexual abuse criminalizes “subject[ing]

another person” who is “[l]ess than fourteen years old” to “sexual contact.” NYPL § 130.60(2). As Islam sees it, the minimal culpable conduct under the New York statute sweeps in conduct even broader than what § 3509(a)(8) defines as sexual abuse, including “mere kissing as well as brief touching of other parts of the body such as the neck, navel, or leg.” Opening Br. 2. Again, however, Islam’s argument runs up against our precedent.

In *Cadapan v. Attorney General*, 749 F.3d 157 (3d Cir. 2014), we interpreted a Pennsylvania statute that defined “indecent contact” in terms nearly identical to the definition of “sexual contact” in the New York statute of conviction.⁷ See

⁷ New York law defines “sexual contact” as: “any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party,” including “touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.” NYPL § 130.00(3). Meanwhile, the Pennsylvania statute interpreted in *Cadapan*, see 18 Pa. Cons. Stat. § 3126, defines “indecent contact” as: “[a]ny touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in any person,” 18 Pa. Cons. Stat. § 3101. Pennsylvania and New York courts’ construction of the phrase “sexual or other intimate parts,” which is not defined in either NYPL § 130.00(3) or 18 Pa. Cons. Stat. § 3101, has also been strikingly similar.

18 Pa. Cons. Stat. § 3126. We concluded that all conduct proscribed by the Pennsylvania statute fell within the dictionary definitions of “molestation” and “sexual

Pennsylvania courts have interpreted the phrase to include “any body part that is personal and private, and which the person ordinarily allows to be touched only by people with whom the person has a close personal relationship, and one which is commonly associated with sexual relations or intimacy.” *Commonwealth v. Crenshaw*, 306 A.3d 383, 395 (Pa. Super. Ct. 2023) (internal quotation marks omitted) (quoting *Commonwealth v. Gamby*, 283 A.3d 298, 313-14 (Pa. 2022)); see also *Commonwealth v. Fisher*, 47 A.3d 155, 158 (Pa. Super. Ct. 2012) (noting “indecent contact” could include touching of “[t]he backs of the legs . . . shoulders, neck, and back”). Similarly, New York courts have interpreted the identical phrase to include “considerations other than mere anatomical location, such as what area of the body is touched, what is the manner of the touching, and under what circumstances did the touching take place.” *Rodriguez v. Barr*, 975 F.3d 188, 193 (2d Cir. 2020) (citation modified) (quoting *People v. Morbelli*, 544 N.Y.S.2d 442, 446 (N.Y. Crim. Ct. 1989)); see also, e.g., *People v. Graydon*, 492 N.Y.S.2d 903, 904-05 (N.Y. Crim. Ct. 1985) (holding that defendant rubbing the victim child’s leg constituted proscribed sexual contact under NYPL § 130.00(3)); *People v. Belfrom*, 475 N.Y.S.2d 978, 980 (N.Y. Sup. Ct. 1984) (holding the same where defendant forced his victim to touch his navel with her fingernails).

exploitation” of a child as those terms were used in § 3509(a)(8) (criminalizing the “molestation, prostitution, or other form of sexual exploitation of children”),⁸ and thus “constitute[d] . . . by extension, sexual abuse of a minor” under the INA. *Cadapan*, 749 F.3d at 161. Given the substantial similarities between the New York and Pennsylvania statutes, *Cadapan* leads us to the same result here.

Islam’s arguments to the contrary are unavailing. The interpretation of both “molestation” and “sexual exploitation” in *Cadapan* was a core reason why we concluded the petitioner’s Pennsylvania conviction was an aggravated felony under the INA; it was not, as Islam characterizes it, mere dictum, which is “a statement in a judicial opinion that could have been deleted without seriously impairing the analytical foundations of the holding” and “may not have received the full and careful consideration of the court that uttered it.” *United States v. Mallory*, 765 F.3d 373, 381 (3d Cir. 2014) (citation modified). And, in determining that the scope of proscribed conduct in Islam’s statute of conviction and the

⁸ “Molestation” is defined, in part, as “the act of making unwanted and indecent advances to or on someone, especially for sexual gratification,” while “sexual exploitation” is defined as “the use of a person, especially a child, in prostitution, pornography, or other sexually manipulative activity that has caused or could cause serious emotional injury.” *Cadapan*, 749 F.3d at 161 & n.6 (citation modified) (quoting *Black’s Law Dictionary* 1096, 1498-99 (9th ed. 2009)).

federal generic offense are a categorical match, we do not, as Islam contends, affirm an agency decision on grounds the agency itself did not invoke. *See Sec. & Exch. Comm’n v. Chenery Corp.*, 332 U.S. 194, 196 (1947). The BIA’s rationale was that Islam’s “conviction qualifies as an aggravated felony,” App. 6, which includes convictions under laws that criminalize conduct encompassed in “molestation” or “sexual exploitation of children” under § 3509(a)(8).⁹

Because the scope of conduct prohibited by the federal generic offense is defined by § 3509(a)(8) and the range of conduct prohibited by the New York statute fits within that definition, the New York statute does not sweep more broadly than the federal generic definition as to the proscribed conduct. In short, there is no categorical mismatch on that basis.

⁹ The two cases cited by the BIA in support of this conclusion do not suggest otherwise: *Debique* affirmed the BIA’s determination that the petitioner’s conviction under NYPL § 130.60(2) fell “within the meaning of either the use of a child to engage in sexually explicit conduct or the molestation or sexual exploitation of children as contained in 18 U.S.C. § 3509(a)(8),” 58 F.4th at 680-81; *see id.* at 679-80, 684, and *Reyes*—which, in any case, is a non-binding, unpublished decision—agreed with the Second Circuit’s conclusion in *Debique*, *see* 2023 WL 2184831, at *3.

2. Age Differential Between Perpetrator and Victim

Islam's next argument for a categorical mismatch is that the New York statute does not require any age differential between the perpetrator and victim, while the federal generic definition of sexual abuse of a minor captures only offenses committed by a perpetrator who is at least four years older than the victim. **Islam Br. 36-37.** We agree with Islam on the former but disagree on the latter.

First, the New York statute does not require an age gap between the perpetrator and victim. It requires that the victim be "[l]ess than fourteen years old," NYPL § 130.60(2), but is silent as to the perpetrator's age. By contrast, surrounding statutory provisions do specify the perpetrator's age,¹⁰ which further suggests that the New York legislature's choice not to do so in NYPL § 130.60(2) was intentional. True, at the time Islam committed his offense, individuals under the age of 16 could not be held criminally responsible for misdemeanor conduct, including Islam's offense, under New York law.¹¹

¹⁰ *See, e.g.*, NYPL § 130.65(4) (first-degree sexual abuse); *id.* § 130.66(1)(d) (third-degree aggravated sexual abuse); *id.* § 130.75(1)(b) (course of sexual conduct against a child in the first degree); *id.* § 130.80(1)(b) (same, in the second degree); *id.* § 130.96 (predatory sexual assault against a child).

¹¹ For instance, NYPL § 10.00(18) listed the offenses for which an individual younger than 16 could be held "criminally responsible," and § 130.60 is not included on the list, *see*

But “we focus on the *elements* of the crime when applying the categorical approach.” *Grijalva Martinez v. Att’y Gen.*, 978 F.3d 860, 867 n.4 (3d Cir. 2020) (emphasis added); *see id.* (noting, for instance, that an affirmative defense in a criminal statute was “of no consequence” for the categorical approach). And whether viewed as an affirmative infancy defense or as creating a *de facto* age differential between the defendant and victim, New York’s age-based limitations on criminal responsibility are not elements of Islam’s offense—i.e., they are not facts that a jury must find “unanimously and beyond a reasonable doubt.”¹² *Descamps v. United States*, 570 U.S. 254,

NYPL § 10.00(18) (2008); meanwhile, NYPL § 30.00(1) stated, “Except as provided in subdivision two of this section, a person less than sixteen years old is not criminally responsible for conduct,” NYPL § 30.00 (2007), and subdivision two does not list § 130.60 either, *id.* The IJ cited NYPL § 30.00 in concluding that Islam’s “proposed minimum conduct” of “sexual acts involving a 14-year-old perpetrator and a 13-year-old victim” was “a legal impossibility,” and that the statute of conviction had to include an age gap. App. 36. We note, though, that the IJ misstated the age of criminal responsibility to be 17, not 16, when he noted, “As of the date of [Islam’s] conviction, persons *under 17 years of age* were not criminally responsible for violations of misdemeanors such as N.Y.P.L. 130.60(2).” App. 36 (emphasis added).

¹² New York’s model jury instructions for NYPL § 130.60(2) also do not include age-based limitations on criminal responsibility, which further suggests that these limitations are

269 (2013); *see also Stubbs v. Att’y Gen.*, 452 F.3d 251, 253-54 (3d Cir. 2006) (noting that the categorical approach prohibits “consideration of evidence other than the statutory definition of the offense”).

Second, we do not see sufficient support for interpreting the federal generic offense of sexual abuse of a minor to require a minimum age gap between the victim and perpetrator, let alone the four-year age gap derived from § 2243(a), for which Islam argues. The Supreme Court left the issue of whether the generic offense contains an age differential “for another day” in *Esquivel-Quintana*, 581 U.S. at 397, and we have not yet addressed it. But *Esquivel-Quintana* did provide us with “the analytical pattern” to do so, *Cabeda*, 971 F.3d at 173: We examine the text and structure of the INA, “related federal statute[s], and evidence from state criminal codes,” and other relevant sources, *Esquivel-Quintana*, 581 U.S. at 393.

The text does not support imposing an age differential in the federal generic offense of sexual abuse of a minor. As the Supreme Court noted in *Esquivel-Quintana*, Congress did choose to “focus[] on age” in defining “sexual abuse of a minor” in 8 U.S.C. § 1101(a)(43)(A). *Id.* at 391 (emphasis added). But that focus was on the *victim’s* age, not the perpetrator’s, which led the Court to conclude that “to qualify as sexual abuse of a minor, the statute of conviction must

not elements of Islam’s offense. *See* NYPL Model Jury Instr. § 130.60(2) (2010).

prohibit certain sexual acts based at least in part on the age of the victim.” *Id.*; *see also Garcia-Urbano v. Sessions*, 890 F.3d 726, 730 (8th Cir. 2018) (noting that the ordinary meaning of “sexual abuse of a minor” when this term was added to the INA “included engaging in sexual contact with a person who is below a specified age”). “[L]egal and other well-accepted dictionaries” also do not define the phrase “sexual abuse of a minor” to “include . . . an age-differential requirement.” *United States v. Rodriguez*, 711 F.3d 541, 562 n.28 (5th Cir. 2013) (en banc), *abrogated on other grounds by Esquivel-Quintana*, 581 U.S. 385.

A survey of state codes in effect in 1996, when the sexual abuse of a minor offense was added to the INA, also indicates that the federal generic offense does not contain an age differential. *See Esquivel-Quintana*, 581 U.S. at 396 n.3 (noting that a state-level multijurisdictional analysis, though not a necessary component of the categorical approach, can still “offer[] useful context”). As of 1996, New York was among 28 jurisdictions nationwide that required no age differential in at least some of their statutes dealing with sexual abuse involving minor victims.¹³ For statutes criminalizing

¹³ *See* Ariz. Rev. Stat. §§ 13-1404(A), 13-1410(A) (1993); Cal. Penal Code § 288(a) (1996); Conn. Gen. Stat. Ann. § 53a-73a (1996); Del. Code. Ann. tit. 11, § 768 (1996); Fla. Stat. § 800.04 (1996); Ga. Code Ann. § 16-6-4(a) (1996); Haw. Rev. Stat. Ann. § 707-732(1)(b) (1993); Kan. Stat. Ann. § 21-3503 (1996); Ky. Rev. Stat. Ann. §§ 510.110(1)(b)(2),

conduct where the victim is 14 or younger, like Islam’s statute of conviction, 15 out of 29 jurisdictions required no age gap on the plain text of their statutes.¹⁴

In *Esquivel-Quintana*, moreover, the Supreme Court declined to “import[]” § 2243 “wholesale” into the federal generic definition of sexual abuse of a minor, in part because § 2243 requires a minimum four-year age gap between the perpetrator and victim. *Id.* at 395 (citing 18 U.S.C. § 2243(a)). The Court noted that including this element in the aggravated

510.120(1)(b) (1996); Mass. Gen. Laws Ann. ch. 265, § 13B, ch. 272, § 35A (1996); Mo. Ann. Stat. §§ 566.067(1), 566.068(1) (1996); Nev. Rev. Stat. Ann. § 201.230(1) (1996); N.H. Rev. Stat. Ann. § 632-A:3 (1996); N.M. Stat. Ann. § 30-9-13(A) (1996); NYPL §§ 130.60(2), 130.65(3) (1996); N.D. Cent. Code §§ 12.1-20-04(2), 12.1-20-03(2)(a) (1995); Ohio Rev. Code Ann. § 2907.05(A)(4) (1996); Or. Rev. Stat. § 163.415(1)(b) (1996); 18 Pa. Cons. Stat. § 3126(a)(7) (1996); 11 R.I. Gen. Laws § 11-37-8.3 (1996); S.C. Code Ann. § 16-15-140 (1996); S.D. Codified Laws § 22-22-7 (1996); Tenn. Code Ann. § 39-13-504(a)(4) (1996); Utah Code Ann. § 76-5-404.1(1) (1996); Vt. Stat. Ann. tit. 13, § 3252(a)(3) (1996); Va. Code Ann. § 18.2-67.3(A)(1) (1996); Wis. Stat. Ann. § 948.02(1), (2) (1995); Wyo. Stat. Ann. § 14-3-105 (1996).

¹⁴ In addition to New York, these jurisdictions included California, Hawaii, Kentucky, Massachusetts, Missouri, Nevada, New Hampshire, New Mexico, Ohio, Pennsylvania, Rhode Island, Tennessee, Utah, and Virginia.

felony of sexual abuse of a minor, over and above the requirement that the victim must be under 16, would exclude from the generic offense “the statutory rape laws of most States,” and reasoned that it therefore could not “rely on § 2243(a) . . . as providing the complete or exclusive definition” of the sexual abuse of a minor federal generic offense. *Id.*; *cf. Taylor v. United States*, 495 U.S. 575, 594 (1990) (refusing to interpret the burglary predicate offense under federal statute “to mean common-law burglary,” because that “would come close to nullifying that term’s effect in the statute,” given that “few of the crimes now generally recognized as burglaries would fall within the common-law definition”). We too share this common-sense concern about excluding large swaths of criminal statutes from the federal generic definition of sexual abuse of a minor.

Our sister circuits share these concerns. The Fifth Circuit has held, in applying the Sentencing Guidelines, that “the generic crime of ‘sexual abuse of a minor’ does not require an age differential” between perpetrator and victim. *United States v. Escalante*, 933 F.3d 395, 404-05 (5th Cir. 2019); *see also Velasco-Giron v. Holder*, 773 F.3d 774, 778 (7th Cir. 2014) (noting that “it would be hard to see a problem in using the same age line [in defining a victim as someone under 18],” delineated in *Rodriguez*, “to identify ‘sexual abuse of a minor’ for immigration purposes” (quoting § 1101(a)(43)(A))). The Ninth Circuit held before *Esquivel-Quintana* that the generic offense of sexual abuse of a minor contained a four-year age gap. *See Estrada-Espinoza v. Mukasey*, 546 F.3d 1147, 1158

(9th Cir. 2008) (en banc). But it has since observed that that “may be inconsistent with the holding and reasoning of . . . *Esquivel-Quintana*,” *United States v. Thompson*, 127 F.4th 1204, 1211 n.5 (9th Cir. 2025), and opined that “sexual conduct involving children under the age of 14 is *per se* abusive,” *Quintero-Cisneros v. Sessions*, 891 F.3d 1197, 1202 (9th Cir. 2018) (citation modified). And the Second Circuit determined that NYPL § 130.60(2) was a categorical match for sexual abuse of a minor in part because it could not construe the federal generic offense as containing an age differential “no matter how young the victim,” concluding that “[a] criminal offense involving a victim under fourteen years old does not sweep more broadly than the generic federal definition of ‘sexual abuse of a minor.’” *Garcia Pinach v. Bondi*, 147 F.4th 117, 131 (2d Cir. 2025) (citation modified) (quoting *Debique*, 58 F.4th at 683).

Notably, no other Court of Appeals has definitively concluded that the federal generic offense of sexual abuse of a minor requires an age gap, outside the context of statutory rape offenses.¹⁵ The Eighth and Tenth Circuits merely reasoned

¹⁵ *Cf. Leger v. Att’y Gen.*, 101 F.4th 1295, 1308 (11th Cir. 2024) (“[W]e conclude that, in the context of statutory rape offenses that criminalize consensual sexual activity between adolescents who are 12 to 15 years old, the generic federal offense of sexual abuse of a minor requires that the perpetrator be at least one year older than the victim.” (citation modified)). The Ninth Circuit has also appeared to cabin its holding in

that, to the extent the generic offense mandated an age gap, any such gap did not exceed two years and a day, which was sufficient in those cases to find a categorical match. *See Garcia-Urbano*, 890 F.3d at 730; *Bedolla-Zarate v. Sessions*, 892 F.3d 1137, 1141-42 (10th Cir. 2018).

The sources Islam cites to the contrary do not outweigh this evidence. Islam notes that the Model Penal Code defines several sexual abuse offenses involving minors to include an age differential. *See* Model Penal Code § 213.8 (Am. L. Inst. 1985). The Model Penal Code is relevant “authority,” alongside “dictionaries, federal laws, [and] state laws,” for discerning a federal generic offense under the INA. *Pugin v. Garland*, 599 U.S. 600, 606 (2023); *see also Esquivel-Quintana*, 581 U.S. at 395-96 (noting the Model Penal Code’s defined age of consent in its discussion of multi-jurisdictional survey). Yet neither this Court nor the Supreme Court has ever assigned it significant, let alone dispositive, weight. Islam also relies on the multijurisdictional survey cited in *Leger v. Attorney General*, 101 F.4th 1295, 1306-07 (11th Cir. 2024), but this has limited relevance, in part because the survey’s scope was distinguishable: It analyzed not just statutes criminalizing sexual contact, like NYPL § 130.60(2), but also statutory rape statutes prohibiting penetrative sexual activity, which implicate the jurisdiction’s age of consent for

Estrada-Espinoza v. Mukasey, 546 F.3d 1147 (9th Cir. 2008) (en banc) to “defin[ing] statutory rape laws only,” *United States v. Medina-Villa*, 567 F.3d 507, 515 (9th Cir. 2009).

intercourse. *See id.*; *see, e.g.*, 18 Pa. Cons. Stat. § 3122.1 (1995); Tenn. Code Ann. § 39-13-506(a) (1991). In purpose and structure, the latter group of statutes are distinct from the former, which are most relevant here.

For the foregoing reasons, we conclude there is insufficient support for requiring an age differential in the federal generic offense. Because Islam’s statute of conviction also requires no age gap, there is no categorical mismatch.

3. Mens Rea

Finally, Islam contends that the mens rea of the New York statute is overbroad as compared to the federal generic definition. It is undisputed that the federal generic offense requires at least “knowing conduct as to the sexual act in question,” *Cabeda*, 971 F.3d at 173, and that NYPL § 130.60(2), which defines “sexual abuse in the second degree” simply as “subject[ing] another person to sexual contact,” does not specify the mens rea for the proscribed sexualized contact. According to Islam, nor does the coordinate statute, NYPL § 130.00(3), which defines “sexual contact” as “any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party.” Indeed, Islam asserts that § 130.00(3) “specifies a mental state only as to the purpose or motivation of the actor, and not as to the requisite act of touching”—in that “it does not require the actual touching to be knowing or intentional.” Opening Br. 46. That would, according to Islam, trigger New York’s gap-filling

statute, which would prescribe a mens rea of recklessness at most.

The flaw with this argument is its premise: The text and structure of NYPL § 130.00(3), as well as caselaw interpreting similarly constructed statutes, indicate that it mandates an intentional or knowing mens rea as to the prohibited touching, just like the federal generic offense.

We start with the text. Statutory terms must be construed in context, as a term “is given more precise content by the neighboring words with which it is associated.” *United States v. Williams*, 553 U.S. 285, 294 (2008). In *Borden v. United States*, 593 U.S. 420 (2021), the Supreme Court applied this principle in interpreting the phrase “use of physical force against the person of another” in the Armed Career Criminal Act. *Id.* at 430-31; *see* 18 U.S.C. § 924(e)(2)(B)(i). The Supreme Court acknowledged that the word ‘against’ could be construed passively, meaning “mak[ing] contact with” (e.g., “waves crashing against the shore”), where the phrase “the person of another” is the “mere recipient” of the force. *Borden*, 593 U.S. at 430. That construction would support a mens rea of recklessness. *Id.* But the Court reasoned that the “pairing of volitional action [(i.e., ‘use of physical force’)] with the word ‘against’ supports that word’s *oppositional, or targeted, definition*,” *id.* at 431 (emphasis added), where it introduces a “conscious object” of the force, such as in the sentence: “The general deployed his forces *against* a rival regiment,” *id.* at 430 (emphasis added). The Court concluded that the statute—read

with this more natural, oppositional meaning of ‘against’—therefore “covers purposeful and knowing acts, but excludes reckless conduct.” *Id.* at 432.

Applying *Borden*, we held in *United States v. Henderson*, 80 F.4th 207 (3d Cir. 2023), that a Pennsylvania criminal statute prohibiting “threaten[ing] another with . . . immediate serious bodily injury” in the course of committing a theft, 18 Pa. Cons. Stat. § 3701(a)(1)(ii), required proof that the defendant acted with a knowing or intentional mental state, because the phrase “another with” “introduces an intended target, not a mere recipient of the threat by happenstance,” giving the entire statutory phrase an oppositional meaning. *Henderson*, 80 F.4th at 213-14.

Likewise, in NYPL § 130.00(3), “any touching of” could theoretically denote a passive action, such that the phrase “the sexual or other intimate parts of a person” indicates the thing with which the perpetrator happened to come into contact. *Cf. Borden*, 593 U.S. at 430-31. But in the context of the whole phrase, “any touching of” takes on an oppositional meaning, where “touching” denotes a volitional action, and “of” directs that action to the perpetrator’s intended target—the “sexual or other intimate parts of a person.” NYPL § 130.00(3). Thus, as in *Borden* and *Henderson*, the text of the statute signals that the prohibited conduct—here, sexualized touching—entails a knowing or purposeful intent, and mere recklessness will not suffice.

The structure of NYPL § 130.00(3) further undermines Islam’s theory that his statute of conviction proscribes merely reckless touching. In *People v. Smith*, 591 N.E.2d 1132 (N.Y. 1992), New York’s highest court analyzed a similarly structured criminal statute, which defined robbery as, in the course of committing larceny, “us[ing] or threaten[ing] the immediate use of physical force upon another person *for the purpose of*: (1) Preventing or overcoming resistance to the taking of the property . . . ; or (2) Compelling the owner of such property or another person to deliver up the property” *Id.* at 1133 (quoting NYPL § 160.00).¹⁶ The New York court interpreted “for the purpose of” as attaching to the preceding action—using or threatening force—meaning that “a defendant *must intend* that the threatened or actual use of physical force have one of the enumerated consequences.” *Id.* (emphasis added). Indeed, it concluded that “the statute is difficult to read otherwise,” because, “[l]ogically, a defendant cannot act with a specified purpose unless an intent is formed to carry out that purpose.” *Id.*¹⁷ By the same logic, a defendant

¹⁶ We defer to the New York Court of Appeals’s interpretation because a state’s highest court has the power to interpret the substantive elements of its state’s criminal offenses. *See Jackson v. Virginia*, 443 U.S. 307, 324 n.16 (1979); *see also Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975) (“[S]tate courts are the ultimate expositors of state law.”).

¹⁷ The language and structure of NYPL § 130.00(3) distinguishes it from 18 Pa. Cons. Stat. § 3123(a)(7), which we interpreted in *Cabeda*, 971 F.3d at 174, and which proscribes

cannot violate NYPL § 130.60(2) with negligent or reckless conduct, because he cannot touch another person's or force the victim to touch his sexual or other intimate parts "for the purpose of gratifying sexual desire of either party," NYPL § 130.00(3), without intending that the action of "touching" take place. In other words, the proscribed touching itself must be intentional or knowing.

The scenario Islam offers in support of his argument to the contrary does not persuade us to depart from this reading of the statute. Islam imagines a perpetrator on a crowded subway train who moves towards another passenger for the purpose of sexual gratification (say, to be closer to them) without necessarily intending to touch them, but then the subway car jolts, causing the perpetrator to make contact with the other passenger's intimate body part. That touching, he

deviate sexual intercourse. In that case, the prohibited conduct was defined to "include[] penetration, however slight, of the genitals or anus of another person with a foreign object for any purpose other than good faith medical, hygienic or law enforcement procedures." *Id.* (quoting 18 Pa. Cons. Stat. § 3101). Because the Pennsylvania statute contained no analogous phrase to "for the purpose of gratifying sexual desire of either party," NYPL § 130.00(3), it did not itself specify the required mens rea for the prohibited conduct, and we appropriately turned to the Commonwealth's gap-filling provision, *Cabeda*, 971 F.3d at 174 (citing 18 Pa. Cons. Stat. § 302(c)).

posits, would have amounted to “sexual contact” under NYPL § 130.00(3), even though the actual touching was at most reckless. Even if this scenario were plausible, the logical, ordinary meaning of the statute does not encompass reckless conduct, because the phrase “for the purpose of” attaches to the act of touching. NYPL § 130.00(3).

In sum, there is no categorical mismatch between the mens rea of the federal generic definition of sexual abuse of a minor and Islam’s statute of conviction: The proscribed touching in both must be knowing or intentional. *Accord Garcia Pinach*, 147 F.4th at 130 (concluding that the mens rea of NYPL § 130.60(2) is not overbroad as compared to the federal generic definition of sexual abuse of a minor).

* * *

Absent merit to any of Islam’s three arguments for a categorical mismatch, we lack a “colorable claim[] or question[] of law” that would permit us to review Islam’s final order of removal for an aggravated felony under 8 U.S.C. § 1252(a)(2)(D). *Pareja*, 615 F.3d at 186 (citation modified). Accordingly, we must dismiss the portion of his petition for review contesting his removability for lack of jurisdiction. *See* 8 U.S.C. § 1252(a)(2)(C).

B. Relief Under the Convention Against Torture

To be entitled to protection from removal under CAT, Islam had to show “that it [was] more likely than not” he would

be tortured if removed to Bangladesh, by or with the acquiescence of a government official. *Myrie v. Att’y Gen.*, 855 F.3d 509, 515 (3d Cir. 2017) (quoting 8 C.F.R. § 1208.16(c)(2)). The IJ found—and the BIA affirmed—that Islam failed to meet this threshold on his claim that he would be tortured either for his political activities with the BNP or for violating nighttime curfews imposed by the authorities in July 2024 that were accompanied by shoot-on-sight orders. The IJ’s determinations on whether “future events [are] more likely than not to occur” are factual findings, *id.* at 516, which, under the substantial evidence standard, we treat as “conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary,” *Herrow v. Att’y Gen.*, 93 F.4th 107, 112 (3d Cir. 2024) (quoting 8 U.S.C. § 1252(b)(4)(B)). Islam contends that the IJ and BIA made two errors in denying him relief under CAT.

First, Islam argues that the agency failed to fulfill its obligation to review “all evidence relevant to the possibility of future torture” under 8 C.F.R. § 1208.16(c)(3). True, all such evidence “must be considered in reviewing a CAT application,” *Green v. Att’y Gen.*, 694 F.3d 503, 508 (3d Cir. 2012), but the IJ did just that. Far from ignoring or cherry-picking relevant evidence, the IJ explicitly referenced record evidence on the human rights violations and threats that BNP supporters were facing around the time of Islam’s merits hearing, including mass arrests of BNP members, attacks on BNP rallies, and targeting of BNP leaders, and the IJ also discussed Islam’s testimony on his past and intended future

political activities and his fears of being harmed during the nighttime curfews. *Cf., e.g., Herrow*, 93 F.4th at 113-16 (reversing denial of CAT relief where IJ failed to discuss evidence indicating widespread torture of members of petitioner’s ethnic group); *Kang v. Att’y Gen.*, 611 F.3d 157, 164-68 (3d Cir. 2010) (reversing denial of CAT relief where IJ ignored or mischaracterized material evidence, including about past torture suffered by members of petitioner’s organization).

The conclusion the IJ derived from this evidence—that Islam had not shown it was more likely than not that he would be tortured if returned to Bangladesh, either because of the state-imposed curfews or his BNP affiliation—was supported by substantial evidence. Islam himself testified that he believed he could reside with family if returned to Bangladesh, thus providing him a safe place to stay during the curfews accompanied by shoot-on-sight orders. And Islam neither demonstrated that BNP members were suffering rights violations on such a scale after the January 2024 elections that Islam’s BNP affiliation would put him in danger of being tortured if returned, nor established that he had held or would occupy a high-profile position in the BNP that would leave him vulnerable to being singled out.¹⁸

¹⁸ The IJ’s discussion on this point certainly lacked clarity at moments. For instance, at one point, the IJ’s opinion states that Islam “did not testify that he would engage in any political rallies or volunteer in support of the [BNP],” App. 15, but it

Islam’s second contention, that the BIA improperly undertook factfinding, is also meritless. The BIA can “tak[e] administrative notice of commonly known facts such as current events or the contents of official documents,” but cannot engage in factfinding. 8 C.F.R. § 1003.1(d)(3)(iv).¹⁹ Here, it took “administrative notice that Prime Minister Hasina” of the Awami League “was ousted in August 2024, shortly after the [IJ’s] decision,” and that “current country conditions are greatly improved under the interim government led by a

later notes that Islam had “established that he would more likely than not continue to support [the] BNP, and may even volunteer in support of the BNP,” App. 16. Notwithstanding this less-than-clear analysis by the IJ, Islam still did not point to evidence showing that he was likely to be singled out and tortured. *See Hernandez Garmendia v. Att’y Gen.*, 28 F.4th 476, 484 (3d Cir. 2022) (“The specter of torture must be supported by specific evidence that the individual applicant is more likely than not to be singled out.”). Islam presented no evidence that he was a party leader, so the evidence considered by the IJ would have been relevant to the likely treatment of people with his anticipated role in the BNP as a supporter and volunteer.

¹⁹ *See also Zubeda v. Ashcroft*, 333 F.3d 463, 479 (3d Cir. 2003) (acknowledging that the Administrative Procedure Act permits agencies to take “official or administrative notice of commonly acknowledged facts” and other materials that are not in the record), *abrogated on other grounds by Augustine v. Ridge*, 395 F.3d 123 (3d Cir. 2005).

recipient of the Nobel Peace Prize.” App. 6. This was not reversible error. The establishment of a new regime in Bangladesh since Islam’s hearing and the fact that the new president was a Nobel Peace Prize winner are prototypical examples of “commonly known facts.” 8 C.F.R. § 1003.1(d)(3)(iv). The BIA’s subsequent remark that “current country conditions are greatly improved under the interim government,” App. 6, is more concerning in the absence of any citation to State Department country conditions reports or other official documents. But any error would be harmless, because Islam did not establish that he would more likely than not be tortured if returned to Bangladesh based on the country conditions that existed at the time of his merits hearing. Because the IJ’s denial of CAT relief was supported by substantial evidence and the BIA committed no reversible error in taking notice of updates in the political situation in Bangladesh, we will not disturb the BIA’s dismissal of Islam’s appeal.

IV. CONCLUSION

For the foregoing reasons, we will dismiss Islam's petition for review as to his removability and deny it as to his CAT claim.

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