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In the
United States Court of Appeals
For the Second Circuit

August Term 2019

No. 19-1385

ADERITO FERRAZ MOTA, AKA ADERITO FERRAZ,

Petitioner,

v.

WILLIAM P. BARR, UNITED STATES ATTORNEY GENERAL,

Respondent.

On Petition for Review of a Final Order
of the Board of Immigration Appeals
(Argued June 4, 2020; Decided August 17, 2020)

1 Before: PARKER, LIVINGSTON, and PARK, *Circuit Judges*.

2
3 Aderito Ferraz Mota, a lawful permanent resident, was found removable
4 for having been convicted of two crimes involving moral turpitude (“CIMTs”)
5 pursuant to § 1227(a)(2)(A)(ii) of the Immigration and Nationality Act. The Board
6 of Immigration Appeals affirmed, reasoning that his two convictions were
7 CIMTs. Mota petitioned for review, arguing that his convictions were not CIMTs
8 because the Connecticut statute at issue, CGS § 21a-277(a)(1), may be violated by
9 a wide range of conduct which is not necessarily morally reprehensible. We
10 **DENY** the petition.

11 _____
12
13 JUSTIN CONLON, Law Offices of Justin Conlon, Hartford, CT,
14 *for Petitioner*.

15
16 LAURA HICKEIN, Trial Attorney (Joseph H. Hunt, Assistant
17 Attorney General; Shelley R. Goad, Assistant Director, *on the*
18 *brief*) for the Office of Immigration Litigation, United States
19 Department of Justice, Washington, DC, *for Respondent*.

20 _____
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22 BARRINGTON D. PARKER, *Circuit Judge*:

23 Petitioner Aderito Ferraz Mota, a native and citizen of Portugal, entered
24 the United States in May 2007 on a nonimmigrant visa. In April 2011, Mota
25 adjusted his status to that of a lawful permanent resident. In September 2015,
26 Connecticut law enforcement officers executed a search warrant at Mota’s
27 apartment and arrested him after finding a number of items consistent with the
28 manufacturing and sale of crack cocaine. In August 2016, Connecticut law
29 enforcement executed another search warrant at a motel and again arrested Mota

1 after finding crack cocaine and several items consistent with the sale of crack
2 cocaine in the room in which he was staying. In January 2017, based on these
3 arrests, Mota pleaded guilty to two counts of felony possession of narcotics with
4 intent to sell, in violation of Connecticut General Statutes (“CGS”) § 21a-
5 277(a)(1).

6 CGS § 21a-277(a)(1) provides that “[n]o person may manufacture,
7 distribute, sell, prescribe, dispense, compound, transport with the intent to sell or
8 dispense, possess with the intent to sell or dispense, offer, give or administer to
9 another person, except as authorized in this chapter, any controlled substance
10 that is a (A) narcotic substance, or (B) hallucinogenic substance.” Mota’s plea
11 agreement and certificate of disposition demonstrate that he was convicted
12 under subsection (A) of this statute.

13 In 2018, the Department of Homeland Security charged Mota, based on his
14 two convictions, as removable under 8 U.S.C. § 1227(a)(2)(A)(ii), because he was
15 a noncitizen “convicted of two or more crimes involving moral turpitude, not
16 arising out of a single scheme of criminal misconduct.” The Board of
17 Immigration Appeals has held that crimes involving moral turpitude (“CIMTs”)
18 are offenses that contain “two essential elements: reprehensible conduct and a
19 culpable mental state.” *Matter of Silva-Trevino*, 26 I. & N. Dec. 826, 834 (B.I.A.

1 2016). Mota moved to terminate removal proceedings before an immigration
2 judge, arguing that his convictions did not qualify as CIMTs. However, the
3 immigration judge sustained the charge of removability, and the BIA affirmed. *In*
4 *re Aderito Ferraz Mota*, No. A 200 383 441 (B.I.A. Apr. 10, 2019), *aff'g* No. A 200 383
5 441 (Immig. Ct. Hartford Oct. 31, 2018). The BIA reasoned that because the
6 “minimum conduct that has a realistic probability of being prosecuted under the
7 respondent’s state statute of conviction necessarily involves inherently
8 reprehensible conduct committed with a mental state of knowledge or intent,”
9 Mota’s convictions were “crime[s] involving moral turpitude.” Certified
10 Administrative Record at 5. In support of this conclusion, the BIA pointed to its
11 prior decisions concluding that the unlawful distribution of narcotics involves
12 inherently reprehensible conduct because, among other things, of the social
13 damage inflicted. *Id.* at 4-5.

14 Mota petitions for review. We have jurisdiction under 8 U.S.C.
15 § 1252(a)(2)(D). Mota argues that his convictions are not categorical CIMTs
16 because CGS § 21a-277(a)(1) may be violated by conduct that is not necessarily
17 morally reprehensible. The Government, on the other hand, argues that Mota’s
18 convictions under CGS § 21a-277(a)(1) qualify as CIMTs. We agree with the
19 Government and we deny the petition.

DISCUSSION

I.

1 We afford *Chevron* deference to the BIA's construction of "moral
2 turpitude" but "review *de novo* the BIA's finding that a petitioner's crime of
3 conviction *contains* those elements which have been properly found to constitute
4 a CIMT." *Gill v. INS*, 420 F.3d 82, 89 (2d Cir. 2005). The BIA has explained that
5 "[t]o involve moral turpitude, a crime requires two essential elements:
6 reprehensible conduct and a culpable mental state." *Matter of Silva-Trevino*, 26 I.
7 & N. Dec. at 834. A crime involves reprehensible conduct if that conduct is
8 "inherently base, vile, or depraved, and contrary to the accepted rules of
9 morality and the duties owed between persons or to society in general." *Mendez*
10 *v. Barr*, 960 F.3d 80, 84 (2d Cir. 2020). As to a culpable mental state, "[c]rimes
11 committed knowingly or intentionally generally have been found, on the
12 categorical approach, to be CIMTs." *Gill*, 420 F.3d at 89; *see also Mendez v.*
13 *Mukasey*, 547 F.3d 345, 347 (2d Cir. 2008) ("[G]enerally, where intent is not an
14 element of a crime, that crime is not one involving moral turpitude."); *Matter of*
15 *Ruiz-Lopez*, 25 I. & N. Dec. 551, 551 (B.I.A. 2011) (explaining that a crime has a
16 culpable mental state for a CIMT "[w]here knowing or intentional conduct is an
17 element").

1 To determine whether a conviction contains these elements, the BIA and
2 the courts employ a “categorical approach,” focusing on the intrinsic nature of
3 the offense. *Mendez*, 960 F.3d at 84. Under this approach, “we look only to the
4 minimum criminal conduct necessary to satisfy the essential elements of the
5 crime.” *Mukasey*, 547 F.3d at 348. A crime qualifies as a CIMT only if “by
6 definition, and in all instances, [it] contain[s] . . . those elements that constitute a
7 CIMT.” *Mendez*, 960 F.3d at 84.

8 As noted, Mota was convicted under CGS § 21a-277(a)(1) of felony
9 possession of narcotics with intent to sell. That statute, as noted, provides:

10 No person may manufacture, distribute, sell, prescribe, dispense,
11 compound, transport with the intent to sell or dispense, possess with
12 the intent to sell or dispense, offer, give or administer to another
13 person, except as authorized in this chapter, any controlled
14 substance that is a (A) narcotic substance

15
16 *Id.* Connecticut defines “sale” of a narcotic substance as “any form of delivery
17 which includes barter, exchange or gift, or offer therefor.” CGS § 21a-240(50).

18 “[T]o prove that a defendant is guilty of possession of narcotics with intent to
19 sell, the state must prove . . . that the defendant had (1) either actual or
20 constructive possession of a narcotic substance and (2) the intent to sell
21 narcotics.” *State v. Billie*, 2 A.3d 1034, 1038 n.7 (Conn. App. Ct. 2010).

1 CGS § 21a-277(a)(1) includes the required mens rea element. The statute
2 requires that a defendant have the “intent to sell or dispense” or the intent to
3 “offer, give or administer to another person” a narcotic substance. *Id.* In other
4 words, a violation of the statute involves the knowing, unlawful distribution of a
5 controlled substance to others, or possession with the intent to do so. *See id.*; *see*
6 *also, e.g., State v. Johnson*, 603 A.2d 440, 442 (Conn. App. Ct. 1992) (“A person may
7 be convicted of possession of a narcotic substance with intent to sell when that
8 person knowingly possesses and intends to sell any narcotic substance. . . .”).
9 Since the statute reaches only knowing and intentional conduct, the culpable
10 mental state requirement is met. *See Gill*, 420 F.3d at 89.

11 We also agree with the BIA that violations of CGS § 21a-277(a)(1)
12 invariably involve vile, reprehensible conduct. *See Rodriguez v. Gonzales*, 451 F.3d
13 60, 63 (2d Cir. 2006) (discussing the meaning of “moral turpitude”). The BIA has
14 “long held that evil intent is inherent in the illegal distribution of drugs and that
15 ‘participation in illicit drug trafficking is a crime involving moral turpitude.’”
16 *Matter of Gonzalez-Romo*, 26 I. & N. Dec. 743, 746 (B.I.A. 2016) (quoting *Matter of*
17 *Khourn*, 21 I. & N. Dec. 1041, 1046-47 (B.I.A. 1997)); *see also Matter of Khourn*, 21 I.
18 & N. Dec. at 1047 (holding that federal conviction for possession with intent to

1 distribute a controlled substance is a CIMT)).¹ Indeed, we, as well as numerous
2 other courts, have acknowledged the reprehensible conduct inherent in drug
3 trafficking offenses, *see, e.g., Carmona v. Ward*, 576 F.2d 405, 411-12 (2d Cir. 1978),
4 and, as a result, courts have concluded that such offenses involve moral
5 turpitude.²

6 II.

7 Mota nevertheless argues that a violation of CGS § 21a-277(a)(1) does not
8 necessarily involve moral turpitude because Connecticut’s definition of “sale”
9 covers some conduct that does not involve moral turpitude, including, for
10 example, gifting a small amount of a controlled substance to a friend at a private
11 party. *See, e.g., Pet’r Br.* at 14. We note, however, that Petitioner’s hypothetical-
12 scenario approach is not compatible with the categorical approach. Under the

¹ *See also Matter of J.M. Acosta*, 27 I. & N. Dec. 420, 423 (B.I.A. 2018) (holding that New York conviction for attempted criminal sale of a controlled substance in the third degree constitutes a CIMT because the “statute of conviction necessarily involves inherently reprehensible conduct committed with a mental state of knowledge or intent”); *Matter of Y-*, 2 I. & N. Dec. 600, 602 (B.I.A. 1946) (concluding that an unlawful sale of narcotics in violation of Canadian law is a CIMT because the act “creates human misery, corruption, and moral ruin in the lives of individuals” and “is necessarily . . . base and shameful”).

² *See, e.g., Guevara-Solorzano v. Sessions*, 891 F.3d 125, 128 (4th Cir. 2018) (holding that Petitioner’s conviction “for unlawful possession of marijuana with intent to manufacture, deliver, or sell” constitutes a CIMT); *Barragan-Lopez v. Mukasey*, 508 F.3d 899, 903-04 (9th Cir. 2007) (“Drug trafficking offenses, including possession of unlawful substances for sale, generally involve moral turpitude.”); *United States ex rel. DeLuca v. O’Rourke*, 213 F.2d 759, 762 (8th Cir. 1954) (noting that “there can be nothing more depraved or morally indefensible than conscious participation in the illicit drug traffic”).

1 categorical approach, we focus “on the intrinsic nature of the offense” rather than
2 the particular facts surrounding the petitioner’s conviction. *See Mendez*, 960 F.3d
3 at 84. We acknowledge that Connecticut’s legislature has broadly defined “sale”
4 to encompass exchanges, gifts, and offers of a narcotic substance even for no
5 consideration. *See* CGS § 21a-240(50); *see also State v. Webster*, 308 Conn. 43, 56
6 (2013) (“[W]e conclude that the plain meaning of the statute encompasses every
7 instance in which a defendant offers to, or does in fact, ‘barter, exchange or gift’
8 narcotics to another.”); *Johnson*, 603 A.2d at 442 (“A person may be convicted of
9 possession of a narcotic substance with intent to sell when that person knowingly
10 possesses and intends to sell any narcotic substance, regardless of the amount . . .
11 .”). Nonetheless, the fact that the statute may cover scenarios in which a
12 defendant “offered,” “exchanged,” or “gifted” a narcotic substance, even a small
13 amount, to a friend for no or little remuneration does not foreclose our
14 conclusion under the categorical approach. *Michel v. INS*, 206 F.3d 263, 265 (2d
15 Cir. 2000) (“[T]he fact that a crime may be considered only a minor offense does
16 not preclude a finding that it involves moral turpitude.” (quoting *Matter of Serna*,
17 20 I. & N. Dec. 579, 582 (B.I.A. 1992)); *Carmona*, 576 F.2d at 411 (“Social harm in
18 drug distribution is great indeed. The drug seller, at every level of distribution, is
19 at the root of the pervasive cycle of destructive drug abuse.”). Consequently, the

1 agency did not err in holding that violating CGS § 21a-277(a)(1) involves moral
2 turpitude.

3 In addition, Mota’s attempt to analogize his gift-to-friend scenario as “akin
4 to mere possession” fails. Pet’r Br. at 42. Offenses in violation of CGS § 21a-
5 277(a)(1), unlike “mere possession,” always involves some aspect of or
6 relationship to unlawful distribution to others. In any event, Connecticut
7 distinguishes possession for personal use—conduct that does not violate CGS
8 § 21a-277(a)(1)—from possession with intent to sell, which does violate the
9 statute. *See, e.g., Billie*, 2 A.3d at 1040-41, 1043 (finding insufficient evidence to
10 convict under CGS § 21a-277(a) where the defendant possessed a single package
11 of crack cocaine and the prosecution’s expert testified “possession of such a small
12 quantity generally is more consistent with possession for personal use rather
13 than with intent to sell”).

14 Next, Mota argues that our decision in *Mendez v. Barr*, 960 F.3d 80 (2d Cir.
15 2020), compels a different result. We disagree. In *Mendez*, we considered whether
16 misprision of felony, in violation of 18 U.S.C. § 4, constituted a CIMT. We noted
17 that § 4 “makes it a crime for one with knowledge of the commission of a federal
18 felony to conceal it and not promptly report it to the appropriate authorities.” *Id.*
19 at 82. In holding that misprision of felony under § 4 does not qualify as a CIMT,

1 we explained that “[n]othing in § 4—either expressly or by reasonable
2 inference—speaks to intent,” and that the BIA has repeatedly held “that the
3 indispensable component of a CIMT is ‘evil intent,’ which means a specific
4 mental purpose that is ‘inherently base, vile, or depraved.’” *Id.* at 84 (quoting
5 *Mukasey*, 547 F.3d at 347). We also noted that a person could commit a misprision
6 offense without having evil intent. *Id.* The concern that we had in *Mendez*—that
7 misprision speaks nothing of intent—is simply not present here, where the
8 statute of conviction specifically requires the intent to unlawfully distribute a
9 controlled substance. Moreover, as discussed, *supra*, pp. 7-8, the unlawful
10 distribution of a controlled substance involves reprehensible conduct. Therefore,
11 Mota’s reliance on *Mendez* does not yield a different result.

12 CONCLUSION

13 For the foregoing reasons, the petition for review is **DENIED**.