

## CRIMES INVOLVING MORAL TURPITUDE

Authored & Updated April 2002  
Patrick T. McDermott  
former Central Regional Counsel

Updated May 2004  
Judith G. Patterson  
CIS Chief Area Counsel in Dallas

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A. CRIMES AGAINST THE PERSON

Generally it can be said that crimes against the person involve moral turpitude when criminal intent is an element of the offense. Such criminal intent may be inferred from the presence of unjustified violence or the use of a dangerous weapon. Often, lesser related offenses or lesser degrees of the same offenses might not involve moral turpitude absent criminal intent, unjustified violence, or the use of a dangerous weapon as elements of the offense.

CRIMES AGAINST THE PERSON FOUND TO INVOLVE MORAL TURPITUDE (CIMT)

1. Murder or Intentional Homicide.
2. Voluntary Manslaughter.
- \*3. Manslaughter (depends on degree).
- \*4. Homicide by Reckless Conduct.
5. Involuntary Manslaughter.

6. Attempted Murder.
7. Kidnapping/False Imprisonment.
- \*7a. Kidnapping (State law).
8. Mayhem.
9. Assault with Intent to Commit Murder.
10. Assault with Intent to Commit Abortion.
11. Attempted Assault, Second Degree (with Intent to Commit Carnal Abuse and Rape).
12. Indecent Assault (falls short of rape).
13. Atrocious Assault and Battery.
14. Carrying a Concealed and Deadly Weapon with Intent to Use Against the Person of Another (where the intent to use the weapon is presumed).
15. Assault in the Second Degree (with a weapon or other instrument likely to produce grievous bodily harm).
16. Assault with a Deadly and Dangerous Weapon.
17. Assault (with a weapon likely to produce bodily harm).
18. Rape.
19. Interfering with a Law Enforcement Officer. (The Indictment indicated the use of "deadly physical force.")
20. Attempting to Obstruct or Impede the Progress of Justice.
21. Aggravated Assault Against a Peace Officer.
22. Aggravated Battery.
23. Stalking (aggravated).
24. Driving while intoxicated.
25. Terrorism.

## CRIMES AGAINST THE PERSON NOT INVOLVING MORAL TURPITUDE

- \*1. Manslaughter.
2. Attempted Suicide.
- \*3. Carrying a Concealed Weapon (no intent to use).
4. Possession of an Unregistered Sawed-off Shotgun.
- \*5. Assault and Battery.
6. Simple Assault.
7. Assault with an Unknown Weapon.
8. Riot.
9. Libel.
10. Mailing an Obscene Letter.
- \*11. Kidnapping (State Law).

## CRIMES AGAINST THE PERSON FOUND TO INVOLVE MORAL TURPITUDE

1. Murder or Intentional Homicide, Matter of Lopez-Amaro I.D. 3202 (BIA 1993) is a CIMT in all cases. *Cabral v. INS*, 15 F.3d 193 (1st Cir. 1994), accessory after the fact to murder is a CIMT. He was carrying a corpse wrapped in a blanket in his van. He did not kill the person.

2. Voluntary Manslaughter.

a. Matter of Sanchez-Marin, 11 I. & N. Dec. 264 (BIA 1965) - Chapter 265, Section 13, Annotated Laws of Massachusetts.

b. Matter of Patacki, 15 I. & N. Dec. 324 (BIA 1975) - Michigan Compiled Laws, section 750.321.

c. Matter of S-, 2 I. & N. Dec. 559 (BIA 1946; A.G. 1947) - Ohio General Code, Sec. 12403.

All held that voluntary manslaughter is a CIMT. All dealt with manslaughter statutes that were not divided into voluntary and involuntary manslaughter and all held that the facts

in the respective cases showed voluntary manslaughter Matter of Sanchez-Marín also held that accessory after the fact to voluntary manslaughter is a CIMT.

\*3. Manslaughter.

a. Manslaughter First Degree - Matter of Ghunaim, 15 I. & N. Dec. 269 (BIA 1975). 29 Ohio Code Annotated Section 2901.01 (1954).

Held to be a CIMT. Case dealt with successor statute to the one in Matter of S-, 2 I. & N. Dec. 559 (BIA 1946). Held that facts showed voluntary manslaughter.

b. Manslaughter First Degree - Matter of Rosario, 15 I. & N. Dec. 416 (BIA 1975).

Held that Voluntary First Degree Manslaughter is a CIMT. The alien was convicted under the voluntary portion of the following statute:

Manslaughter is the unlawful killing of a human being without malice. There are two kinds:

1. Voluntary - upon sudden quarrel or heat or passion.
  2. Involuntary - in the commission of an unlawful act, not amounting to a felony, or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution or circumspection.
- c. Voluntary Manslaughter - Matter of Chavez-Calderon, I.D. 3212 (BIA 1993) Penal Code of New Mexico.

\*4. Homicide by Reckless Conduct.

a. Manslaughter Second Degree - Matter of Wojtkow, 18 I. & N. Dec. 111 (BIA 1981). Section 125.15(1), Penal Laws of N.Y.

b. Aggravated Assault by Reckless Conduct - Matter of Medina, 15 I. & N. Dec. 611 (BIA 1976). Aggravated assault under section 12.2(a)(1) of Chapter 38 of Illinois Revised Statutes was determined to be a conviction for a CIMT. The Board ruled that intent or knowledge can serve as the basis for a finding of moral turpitude in criminal conduct. However, in dealing with statutes from jurisdictions other than Illinois, the Board had in the past indicated that moral turpitude for immigration purpose does not necessarily inhere in criminally reckless conduct. See Matter of Gantus-Bobadilla, 13 I. & N. Dec. 777 at 778 (BIA 1971); Matter of Szegedi, 10 I. & N. Dec. 28 (BIA 1962).

In Medina the Board established the general principle that reckless conduct can be a CIMT if the person acting recklessly consciously disregarded a substantial and unjustifiable risk, and such disregard constituted a gross deviation from the standard of care which a reasonable person would exercise in the situation. This definition of

recklessness requires an actual awareness of the risk created by the criminal violator's action.

Aggravated Assault - Matter of Chavez-Calderon I.D. 3212 (BIA 1993) Penal Code of New Mexico.

c. Manslaughter (conscious disregard and unjustifiable risk) - Held to be a CIMT. See *Ma v. Reno*, 208 F.3d 815 (9th Cir. 2000); Matter of Jean, 23 I. & N. Dec. 373 (A.G. 2002).

d. Manslaughter (By Stabbing) - Matter of Ptasi, 12 I. & N. Dec. 790 (BIA 1968). Section 53-13, Connecticut General Statutes. Held to be a CIMT. BIA cited a Connecticut case for the proposition that the law implies malice where the unlawful killing is with a deadly weapon.

5. Involuntary Manslaughter - Matter of Franklin I.D. 3228 (BIA 1994) Missouri law requires a conscience disregard of a substantial and unjustifiable risk, and that such disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation. The BIA found this violation is a CIMT. Matter of Szedi, 10 I. & N. Dec. 28 (BIA 1962) overruled. See also Pg. 11, Manslaughter - Matter of Lopez, 13 I. & N. Dec. 725 (BIA 1971). Compare with Matter of Fualaau, Interim Decision # 3285 mentioned below under Assault in the Third Degree.

6. Attempted Murder - Matter of Awaijane, 14 I. & N. Dec. 117 (BIA 1972). Article 547 of the Criminal Law of Lebanon. Held: Attempted murder is a CIMT.

7. Kidnapping/False Imprisonment - Held: Kidnapping is a CIMT. Matter of C- M-, 9 I. & N. Dec. 487 (BIA 1961) - California law (No citation to statute given in the case). Matter of Nakoi, 14 I. & N. Dec. 208 (BIA 1972) - 18 U.S.C. Section 1201. *Choeum v. INS*, --- F.3d. ---, 1997 WL 677461 (1st Cir. 1997).

a. Simple Kidnapping - Under 14 Louisiana Revised Statutes, Section 45A (1986) contained five subsections. Some of the subsections list violations that are not CIMT. When an alien is convicted under a divisible statute INS must prove he was convicted under a subsection that is a CIMT. If the subsection is not mentioned, then the benefit of the doubt will go to the alien. In this case, the subsection was not listed and the court found no CIMT. *Hamdan v. INS*, 98 F.3d 183 (5th Cir. 1996).

False Imprisonment-Appears to be a CIMT but it is not totally clear from this case. *Chen v. INS*, 87 F.3d 5 (1st Cir. 1996).

\*7a. Kidnapping (State law) - *Hamdan v. INS*, 98 F.3d 183 (5th Cir. 1996).

The court found that the crime of kidnapping under the laws of Louisiana involves a divisible statute containing five separate categories of crime. Some of the categories do not involve moral turpitude. Some categories do not require ransom and

others expressly include removal by the parent. The court remanded this case to the BIA to make a finding regarding the category of crime involved. If the BIA is unable to determine that the category involves moral turpitude, the BIA must then find that the conviction did not involve a CIMT under the theory that when a divisible statute is involved the benefit will go to the alien if a specific category is not mentioned in the conviction document.

8. Mayhem - Matter of Santoro, 11 I. & N. Dec. 607, 608 (BIA 1966). Title 11, Chapter 29, Section 1 of the General Laws of Rhode Island.

Held: Mayhem is a CIMT. Mayhem defined under Rhode Island Law as follows:

Penalty for mutilation or disabling. - Every person who shall voluntarily, maliciously or purposely put out an eye, slit the nose, ear, or lip, or cut off or bite off or disable any limb or member of another, shall be imprisoned not exceeding ten (10) years nor less than one (1) year.

9. Felonious Assault with Intent to Commit Murder - Matter of C-, 5 I. & N. Dec. 370 (BIA 1953) (1916 conviction - no citation to statute given in the case).

10. Assault with Intent to Commit Abortion - Matter of M-, 2 I. & N. Dec. 525 (BIA 1946) - Subdivision 5 of Section 242 of the New York Penal Code. Held to be a CIMT.

11. Attempted Assault, Second Degree (With Intent to Commit Carnal Abuse and Rape) - Matter of Beato, 10 I. & N. Dec. 730 (BIA 1964) - Section 242(5) of the N.Y. Penal Code. Held to be a CIMT.

12. Indecent Assault - Matter of Z-, 7 I. & N. Dec. 253 (BIA 1956) - Section 6052 of the General Statutes of Connecticut, Revision of 1930.

An indecent assault has many of the elements of assault with intent to rape, but falls short of the latter in that there is no intent to commit the graver offense. An indecent assault consists of the act of a male person taking indecent liberties with the person of a female or fondling her in a lewd and lascivious manner without her consent and against her will, but with no intent to commit the crime of rape.

Indecent Assault and Battery on a person 14 years or older is a CIMT. A Massachusetts conviction. *Maghsoudi v INS* 181 F.3d 8 (1st Cir. 1999)

13. Atrocious Assault and Battery - Matter of P-, 7 I. & N. Dec. 376 (BIA 1956) - New Jersey Statute Annotated, Chapter 90, Section 2A:90-1. Held to be a CIMT. The elements of this crime are "maiming or wounding by an assault and battery that is savagely brutal or outrageously or inhumanly cruel or violent."

14. Carrying a Concealed and Deadly Weapon with Intent to Use Against the Person of Another - Matter of S-, 8 I. & N. Dec. 344 (BIA 1959) - Section 616.41, Minnesota

Statutes (Annotated -1957). Held to be CIMT. Note from the statute that the intent is presumed:

Every person who shall manufacture, or cause to be manufactured, sell, keep for sale, offer, or dispose of, any instrument or weapon of the kind usually known as a sling-shot, sand club, or metal knuckles; or who shall attempt to use against another, or with intent so to use, shall carry, conceal, or possess, any of the weapons herein before specified, or any dagger, dirk, knife, pistol, or other dangerous weapon, shall be guilty of a gross misdemeanor. The possession by any person other than a public officer, of any such weapon concealed or furtively carried on the person shall be presumptive evidence of carrying, concealing, or possessing with intent to use the same. (Emphasis added.)

15. Assault in the Second Degree (By the Use of a Knife) - Matter of Goodalle, 12 I. & N. Dec. 106 (BIA 1967) - Subdivision (4) of Section 242 of the New York Penal Law. The BIA found this crime to be a CIMT. The pertinent subsection of the statute involved relates to a person who "willfully and wrongfully assaults another by the use of a weapon or other instrument or thing likely to produce grievous bodily harm."

16. Assault with a Deadly and Dangerous Weapon (Weapon Not Named) - Matter of O-, 3 I. & N. Dec. 193 (BIA 1948) - Section 6195 of the General Statutes of Connecticut. Held to be a CIMT. Cited in Ptasi 12 I. & N. Dec. 790 (Page 5, Section 4.d). Ptasi noted that the only difference between the two situations was that the conduct by the alien in Ptasi resulted in a homicide.

17. Assault (With a Weapon Likely to Produce Bodily Harm).

a. Assault with a firearm - Matter of Montenegro, I.D. 3192 (BIA 1992) a conviction of California Penal Code Section 245(a)(2) is a CIMT. The respondent in this case was charged under 241(a)(2)(c) he alleged he was eligible for 212(c) relief because there was a comparable ground of exclusion. The BIA rejected the Respondent's argument and held that 212(c)c cannot waive a charge of deportability under section 241(a)(2)(c) because there is no analogous ground of inadmissibility. See *Komarenko v INS*, 35 F.3d 439 (9 Cir. 1994)

b. Assault in the Second Degree—

(a) (With a .38 Caliber Revolver) Matter of S-, 5 I. & N. Dec. 668 (BIA 1954) - Section 2414(4) Remington's Revised Statutes of Washington, 1932. Held to be a CIMT. The pertinent subsection of the statute involved relates to a person who "under circumstances not amounting to assault in the first degree . . . shall willfully assault another with a weapon or other instrument or thing likely to produce bodily harm."

(b) Second Degree Assault Connecticut General Statutes Sect. 53a-60 assault with intent to cause serious physical injury to another person. *Nguyen v. Reno* 211 F.3d 692 (1st Cir.2000)

\*c. Assault in the Third Degree - Matter of Baker, 15 I. & N. Dec. 50 (BIA 1974). Virgin Islands law - 14 V.I.C. 297 (1964), as amended (Supp. 1973). Held to be a CIMT.



The pertinent subsection involved relates to a person who "assaults another with a deadly weapon." Although the alien's conviction record did not mention the use of a weapon, he stated at his deportation hearing that he used a partly full beer bottle, from which he had been drinking, to strike the victim.

\*A conviction for assault in the third degree under Section 9A. 36.031(1)(F) of the Revised Code of Washington is not a CIMT where intentional or reckless conduct is excluded from the statutory definition of the crime. Matter of Perez-Contreras, I.D. 3194 (BIA 11-20-92).

18. Rape - Matter of Z-, 7 I. & N. Dec. 253 (BIA 1956). Matter of B-, 5 I. & N. Dec. 538 (BIA 1953).

\*19. Interfering With a Law Enforcement Officer - Matter of Logan, 17 I. & N. Dec. 367 (BIA 1980). Involved the use of "deadly physical force." The Defendant used a knife.

20. Attempting to Obstruct or Impede the Progress of Justice. South African crime was found to be comparable to the federal crime of Influencing or Injuring an Officer, Juror or Witness, 18 U.S.C. 1503, a crime involving moral turpitude. Knoetze v. United States Dept. of State, 634 F.2d 207 (5th Cir.. 1981), cert. denied, 454 U.S. 823 (1981).

21. Aggravated Assault Against a Peace Officer - Matter of Danesh, 19 I. & N. Dec. 669 (BIA 1988). Texas Law 22.02(a)(2)(A) (Vernon 1979) involves: 1) bodily harm to the victim; 2) knowledge that the victim is an officer; and 3) is performing an official duty. Such conduct exhibits a deliberate disregard for the law, a violation of the accepted rules of morality and the duties owed to society.

22. Assault with Bodily Injury to a Family Member - Matter of Tran, 21 I. & N. Dec. 291 (BIA 1996), held that willful infliction of corporal injury on a spouse, cohabitant, or parent or child of the perpetrator's constitutes a CIMT.

Matter of Deanda-Romo, 23 I. & N. Dec. 597 (BIA 2003), held a Texas misdemeanor conviction of assault with bodily injury to a spouse was a CIMT. Matter of Garcia-Hernandez, 23 I. & N. Dec. 590 (BIA 2003), held California misdemeanor conviction for corporal injury to a spouse was a CIMT. The conviction qualified for the petty offense exception at 212(a)(2)(A)(ii), even though alien was also convicted of battery, a non-CIMT. The limitation that the alien be convicted of only one crime is exceeded only by the commission of a second CIMT, not by the commission of any other type of crime.

22. Aggravated Battery - (a) for causing great bodily harm or (b) use of a deadly weapon. Guillen-Garcia v. INS, 999 F.2d 199 (7th Cir.. 1993).

23. Stalking (aggravated) (a) This Michigan statute provides for a violation if the course of conduct includes the making of one or more "credible threats" against the victim, a member of the victim's family, or another individual living in the victims

household. A “credible threat” means a threat to kill an individual or a threat to inflict physical injury upon another individual that is made in any manner that causes the individual hearing the threat to reasonably fear for his safety. Matter of Ajami, 22 I. & N. Dec. 949 (BIA July 13, 1999) (b) a violation of California penal code section 646.9(B) (Stalking) is a CIMT. See Zavaleta-Gallegos v. INS, 261 F. 3d 951(9th Cir.2001).

24. \*\*\*Driving while intoxicated (aggravated). This crime involved an Arizona statute for aggravated driving while intoxicated. The violation is considered aggravated when the individual drive when his license is suspended, cancelled or revoked. It is also an aggravated violation when he has been previously convicted of DWI. NOTE: The BIA indicated that simple DWI would not likely be a CIMT. IN RE LOPEZ-MEZA ID. 3423 (BIA Dec 21, 1999)

\*\*\*\*\*Driving while Intoxicated: DUI with 2 or more prior DUI convictions is not a CIMT. Matter of Torres-Varela, 23 I. & N. Dec 78 (BIA 2001).

25. Terrorism - A class “D” felony under Iowa law is a CIMT. Matter of In re S- S-, Id. 3317.

#### CRIMES AGAINST THE PERSON NOT INVOLVING MORAL TURPITUDE

\*1. Manslaughter - Matter of Lopez, 13 I. & N. Dec. 725 (BIA 1971) - Alaska Statutes 11.15.040. Held not to be a CIMT since the statute encompassed both voluntary and involuntary manslaughter and it was not distinctly set forth in the indictment that the offense was voluntary rather than involuntary manslaughter. The Sanchez-Marín and S-cases (cited under voluntary manslaughter, supra) were distinguished. These two cases factually involved incidents of voluntary manslaughter. The facts do not show voluntary manslaughter in the case at bar. The indictment states that the alien "did unlawfully and feloniously kill" another person "by shooting him with a gun." See modification by Matter of Franklin I.D. 3228 (BIA 1994).

2. Attempt to Commit Suicide - Matter of D-, 4 I. & N. Dec. 149 (Central Office 1950) - Section 270 of the Canadian Criminal Code. Held not to be a CIMT.

3. Carrying a Concealed Weapon - U.S. ex rel. Andreacchi v. Curran, 38 F.2d 498 (S.D.N.Y. 1926) - N.Y. Law (Statute not cited in the case). Held not to be CIMT.

4. Possession of an Unregistered Sawed-off Shotgun - Matter of Granados, 16 I. & N. Dec. 726 (BIA 1979) - 26 U.S.C. 5861(d), 5871. Held not to be CIMT, Citing Andreacchi, supra.

5. Assault and Battery. (SIMPLE)

Assault in the Third Degree - Matter of E-, 1 I. & N. Dec. 505 (BIA 1943) - Subdivision 1 of Section 244 of the N.Y. Penal Law. Held not to be CIMT. This case involved a mere assault and battery.

\* A conviction for assault in the third degree under Section 9A. 36.031(1)(F) of the Revised Code of Washington is not a CIMT where intentional or reckless conduct is excluded from the statutory definition of the crime. Matter of Perez-Contreras, I.D. 3194 (BIA 11-20-92).

Assault in the Third Degree - Matter of Fualaau 21 I. & N. Dec. 475 (BIA 1996). Involved a crime under Hawaii Revised Statutes. This crime involved the following language: A person commits the offense of assault in the third degree if he / she “ intentionally, knowingly, or recklessly causes bodily injury to another person”... The BIA found that in order for an assault of this nature to be deemed a CIMT, the element of reckless state of mind must be coupled with an offence involving the infliction of serious bodily harm. It may also be coupled with the use of a weapon. This particular case did not involve either a weapon or serious bodily harm therefore it was found not to be a CIMT. This case should be compared with Matter of Franklin, 20 IN Dec. 136. mentioned above under involuntary Manslaughter.

Simple Assault and battery An alien charge with burglary, sexual assault, and rape was allowed to plea to assault and battery. Simple Assault and Battery is not a CIMT. Medina v. United States, 259 F.3d 220 (4th Cir. 2001); Matter of Garcia-Hernandez, 23 I. & N. Dec. 590 (BIA 2003).

#### 6. Simple Assault.

Assaulting and Beating Guard - Matter of B-, 5 I. & N. Dec. 538 (BIA 1953) - Massachusetts Law (Statute for simple assault not cited in the case). Held not to be a CIMT. This case involved a simple assault. The BIA cited Massachusetts's case law for the proposition that the fact the assault was committed upon a police officer does not necessarily change the crime to a CIMT. The indictment here did not charge the alien with being armed with any type of weapon.

NOTE: Matter of Danesh, 19 I. & N. Dec. 669 (BIA 1988), pointed out that Matter of B- is incorrect insofar as it stands for the proposition that an aggravated assault only involves moral turpitude if a deadly or dangerous weapon is used.

#### 7. Assault With an Unknown Weapon.

Assault, Second Degree - Matter of B-, 1 I. & N. Dec. 52 (BIA 1941; A.G. 1941) - Mason's Minnesota Statutes (1927), Section 10098. Held not to be CIMT by the A.G. (reversing the BIA). The pertinent subsection of the statute involved relates to a person who under circumstances not amounting to assault in the first degree, willfully and wrongfully wounds or inflicts grievous bodily harm upon another, with or without a

weapon. In the case at bar, a weapon was used but the kind of weapon was unknown and therefore conceivably it was not a dangerous weapon (and therefore not a CIMT).

8. Riot - Matter of O-, 4 I. & N. Dec. 301 (BIA 1951) - Sections 113 and 115 of the Statutory Criminal Law of Germany. Held not to be a CIMT. To be found guilty one must take part in a "public riotous gathering."

9. Libel - U.S. ex rel. Mylius v. Uhl, 210 F. 860 (2d Cir. 1914) - English Law - Fifth Section of Lord Campbell's Libel Act. Held not to be a CIMT. The language of the conviction governs. The alien libeled the King of England but treason was not the charge involved.

10. Mailing an Obscene Letter - Matter of D-, 1 I. & N. Dec. 190 (BIA 1942) - 18 U.S.C. Section 334 (1940) - Current law - 18 U.S.C. Section 1461. Held not to be a CIMT.

\*11. Kidnapping (State Law) - Hamdan v. INS, 98 F.3d 183 (5th Cir.).

The crime of kidnapping under Louisiana law involves a divisible statute. This case was remanded to the BIA to determine the category of crime involved. If the BIA is unable to determine if the category involves moral turpitude, the benefit goes to the alien and the BIA must find the crime did not involve moral turpitude.

## B. CRIMES AGAINST PROPERTY

Moral turpitude attaches to any crime against property, which involves "fraud," whether it entails fraud against the Government or an individual. The major crimes against property, which involve an evil or predatory intent, likewise involve moral turpitude. Certain crimes against property may require guilty knowledge or an intent to permanently take property. An asterisk is placed next to the crimes, which may or may not be CIMT's depending on the language of the statute or the language used in the indictment.

### CRIMES AGAINST PROPERTY FOUND TO INVOLVE MORAL TURPITUDE

1. Arson.
  - (a) Statutory Arson.
  - (b) Attempted Arson.
2. Blackmail.
3. Forgery.
  - (a) Uttering a Forged Instrument.

- (b) Uttering a Forged Prescription.
  - (c) Accessory Before the Fact in Uttering a Forged Instrument.
  - (d) Forgery of Public Documents and Swindling.
  - (e) Conspiracy to Commit Forgery in the Third Degree and \*(Making False Statements of Financial Condition).
  - (f) Possession of Forgery Devices with Intent to Commit Forgery.
  - (g) Forgery.
- 4.
- (a) Robbery & Attempted Robbery.
  - (b) Armed Robbery.
5. Embezzlement.
6. Larceny.
- (a) Grand.
  - (b) Petty.
- \*7. Receiving (Possession) Stolen Goods (with Guilty Knowledge).  
Concealing Stolen Property (firearms).

#### Possession of Stolen Property

- 8. Burglary.
- 9. Extortion.

  - (a) Sending Threatening Letters Through Mail with Intent to Extort.
  - (b) Theft by Bailee.

- 10. Fraud.

  - (a) Concealing Assets in Bankruptcy.
  - (b) Encumbering Mortgaged Property with Intent to Defraud.

- (c) Fraudulently Issuing Check Without Sufficient Funds.
- (d) Illegal Use of a Credit Card.
- (e) Passing Forged Instruments.
- (f) Attempted Fraud.
- (g) Using the Mails to Defraud.
- (h) Confidence Game.
- (i) Issuing Worthless Checks.
- (j) Selling Colored Margarine with Intent to Defraud.
- (k) Conviction of Making False Statements in the Acquisition of a Firearm from a Licensed Dealer.
- (l) Securities Fraud.
- \*(m) Issuing Check Without Funds (Fraud Inherent).
- (n) Conspiracy to Defraud the Public.
- (o) Welfare Fraud.
- 11. Grand Theft.
- 12. Transporting Stolen Property.
- 13. Malicious Destruction of Property.
- (a) Killing animals belonging to another.
- (b) Attempt to Wreck a Train Operating in Interstate Commerce.
- (c) Tampering with the Motive Power of a Vessel.
- 14. Obtaining Money by False Pretenses.
- 15. Bribery of an Amateur Athlete.
- 16. Malicious Trespass.

## CRIMES AGAINST PROPERTY NOT INVOLVING MORAL TURPITUDE

- \*1. Breaking and Entering/Unlawful Entry.
2. Possession of Stolen Property Without Guilty Knowledge.
- \*3. (a) Malicious Mischief.  
(b) Damaging Private Property (Without Intent).
- \*4. Failure to Pay Ship Fare.
- \*5. Depositing a Slug in a Coin Box.
6. Passing a Check Without Sufficient Funds (Without Intent to Defraud).
7. Loan Sharking.
- \*8. Making False Statements to a Federal Agency.
9. Making False Statements (Canadian Law).
10. Conducting an Illegal Lottery.
11. Joyriding.
- \*12. Possession of Burglary Tools.
13. Juvenile Delinquency.

## CRIMES AGAINST PROPERTY FOUND TO INVOLVE MORAL TURPITUDE

1. Arson.
  - (a) Statutory Arson is a CIMT - Johnson v. United States ex rel. Pepe, 28 F.2d 810 (2d Cir. 1928).
  - (b) Attempted Arson involves an act committed purposely with an evil intention - Matter of S-, 3 I. & N. Dec. 617 (BIA 1949) - Involved Section 512, Criminal Code of Canada. Tremear's Annotated Code of Canada, 1944, in part VIII, section 512, provides as follows:

512. Attempt Arson. - Everyone is guilty of an indictable offense and liable to five years' imprisonment who willfully attempts to set fire to anything mentioned in the last preceding section, or who willfully sets fire to any substance so situated that he knows anything mentioned in the last preceding section is likely to catch fire therefrom.

The word "willfully" appearing in section 512, is defined in section 509 of the Canadian Criminal Code as follows:

Section 509. Everyone who causes any event by an act which he knew would probably cause it, being reckless whether such event happens or not, is deemed for the purposes of this part to have caused it willfully.

2. Blackmail - Ohio conviction for blackmail held to be a CIMT, subjecting alien to deportation, despite a grant of a conditional pardon by governor. *Lehman v. Carson*, 353 U.S. 685 (1957).

3. Forgery.

(a) Uttering a Forged Instrument is a CIMT - *Matter of S- C-*, 3 I. & N. Dec. 350 (BIA 1949); (Penal Code of Guanajuato, Mexico, Article 203). Minnesota conviction for offering a forged check. *Animashaun v. INS*, 990 F.2d 234 (5th Cir. 1993).

Article 203 - The crime of document forgery is committed by any of the following means:

Placing a false signature or flourish, even though imaginary, or altering a true one.

(b) Uttering a Forged Prescription is a CIMT - *Abbenante v. Butterfield*, 112 F. Supp. 324 (E.D. Mich. 1953), *aff'd*, 212 F.2d 794 (6th Cir. 1954) (per curiam).

(c) Accessory Before the Fact in Uttering a Forged Instrument is a CIMT - *Matter of F-*, 6 I. & N. Dec. 783 (BIA 1955); Sections 2 and 3 of Chapter 274, Section 5 of Chapter 267 of the Laws of Massachusetts.

C. 274, Section 2. Accessory Before the Fact.

Whoever aids in the commission of a felony, or is accessory thereto before the fact by counseling, hiring or otherwise procuring such felony to be committed shall be punished in the manner provided for the punishment of the principal felon. (1784, 65, sec. 1; 66, sec. 9; 1804, 131, sec. 1; R.S. 133, sec. 1; G.S. 168, sec. 3; P.S. 210, sec. 3; R.L. 215, sec. 2.)

C. 274, Section 3. Accessory Before the Fact: When and How Tried.

Whoever counsels, hires or otherwise procures a felony to be committed may be indicted and convicted as an accessory before the fact, whether with the principal felon or after his conviction; or may be indicted and convicted of a substantive felony, whether the principal felon has or has not been convicted, or is or is not amenable to justice; and in the last mentioned case may be punished in the same manner as if convicted of being an accessory before the fact. An accessory to a felony before the fact may be indicted, tried and punished in the same county where the principal felon might be indicted and



tried, although the counseling, hiring or procuring the commission of such felony was committed within or without this commonwealth or on the high seas. (1830, 49, secs. 1, 2; R.S. 133, secs. 2, 3; G.S. 168, secs. 4, 5; P.S. 210, secs. 4, 5; R.L. 215, sec. 3.)

C. 267, Section 5. Uttering Forged Record or Contract.

Whoever, with intent to injure or defraud, utters and publishes as true a false, forged or altered record, deed, instrument or other writing mentioned in the four preceding sections, knowing the same to be false, forged or altered, shall be punished by imprisonment in the state prison for not more than 10 years in jail for not more than two years. (1692-3, 18, sec. 8; 1784, 67; 1785, 21, sec. 3; 1804, 120, sec. 1; 1805, 88, sec. 1; R.S. 127, sec. 2; G.S. 162, sec. 2; P.S. 204, sec. 2; 1901, 371, sec. 2; R.L. 209, sec. 3; 1909, 155, sec. 2.)

(d) Forgery of Public Documents - Matter of M, 9 I. & N. Dec. 132 (BIA 1960) - Forgery of Public Documents, in violation of Sections 275, 278, and 284 of the Italian Criminal Code of 1889 and Sections 476 and 482 of the Criminal Code of 1930 is a CIMT.

Swindling - in violation of Section 413 of the Italian Criminal Code of 1889 and Section 640 of the Criminal Code of 1980 is a CIMT. Ibid.

(e) Conspiracy to Commit Forgery in the Third Degree and Making False Statement of Financial Condition is a CIMT- Matter of S-, 9 I. & N. Dec. 688 (BIA 1962). Penal Law of the State of New York, Section 889, Subdivision 1, Paragraph 1.

(f) Possession of Forgery Devices with Intent to Commit Forgery - Matter of Jimenez, 14 I. & N. Dec. 442 (BIA 1973). Criminal possession has been held to be a crime involving moral turpitude when accompanied by intent to commit a crime involving moral turpitude (i.e., forgery). U.S. ex rel. Guarino v. UHL, 107 F.2d 399 (2d Cir. 1939).

(g) Forgery is CIMT- Matter of Seda, 17 I. & N. Dec. 550 (BIA 1980), Georgia. State of Georgia conviction for forgery. Animashaun v. INS, 990 F.2d 234 (5th Cir. 1993). Alabama Criminal code (forgery) is a CIMT; accord Balogun v Ashcroft, 270 F. 3d 274 (5th Cir. 2001). The Fifth Circuit in Morales-Carrera v. Ashcroft, 74 F3d. Appx. 324 (5th Cir. 2003), held that a conviction for forging proof of financial responsibility under the Texas Transportation Code, section 601.196, was a CIMT as the offense involved forgery and was fraudulent in nature.

4. (a) Robbery and Attempted Robbery is a CIMT - Matter of Romandia-Herreros, 11 I. & N. Dec. 772 (BIA 1966) (Citing Mexican Federal Penal Code Re Robbery - Robo"). See also Matter of Martin, 18 I. & N. Dec. 226 (BIA 1982) (Colorado law). Matter of Carballe, 19 I. & N. Dec. 357 (BIA 1986) (Florida Statute). Ashby v.

INS, 961 F.2d 555 (5th Cir. 1992). Matter of Burbano, I.D. 3229 (BIA 1994) - Attempted Robbery and Chen v. INS, 1996 WL 328448 (1st Cir. 6/20/96).

(b) Armed robbery is a CIMT. Paredes-Urrestarazu v. INS, 36 F.3d 801 (9th Cir. 1994).

5. Embezzlement is a CIMT - Matter of Batten, 11 I. & N. Dec. 271 (BIA 1965). Conviction of Conspiracy to Embezzle and Misapply Funds, Monies and Securities in violation of the Federal Reserve Act (18 U.S.C. 656) is a CIMT.

6. Larceny is a CIMT.

(a) "Grand" - Blumen v. Haff, 78 F.2d 833 (9th Cir. 1935).

(b) "Petty" - Matter of Garcia, 11 I. & N. Dec. 521 (BIA 1966).

Long held to be a CIMT. (See also Matter of V-, 2 I. & N. Dec. 340 (BIA 1940) and Matter of V- I-, 3 I. & N. Dec. 571 (BIA 1949) - Petty Theft in California was found to be a CIMT. See also Wilson v. Carr, 41 F.2d 704 (9th Cir. 1930); Matter of Esfandiary, 16 I. & N. Dec. 659 (BIA 1979).

\*7a. Receiving (Possession) Stolen Goods (with Guilty Knowledge) is a CIMT- Wadman v. INS, 329 F.2d 812 (9th Cir. 1964); Matter of A-, 7 I. & N. Dec. 626 (BIA 1957). Knowledge, as an essential element of the crime, is implied (Article 648, Italian Penal Code). Matter of De La Nues, 18 I. & N. Dec. 140 (BIA 1981) - Section 22-2205 District of Columbia Code. Accord De Leon-Reynoso v. Ashcroft, 293 F.3d 633 (3rd Cir. 2002)(receiving stolen property in violation of Pennsylvania statute required subjective belief property was stolen, and therefore, is a CIMT).

7b Possession of Stolen property is a CIMT. This New York statute involved knowing possession of stolen property, with the intention to benefit himself or a person other than the owner or to impede the recovery by the owner. Michel v. INS 206 F.3d 253 (2nd Cir. 2000)

Concealing stolen property (firearms). Yang v. INS, 109 F.3d 1185 (7th Cir. 1997).

8. Burglary - Matter of R-, 1 I. & N. Dec. 540 (BIA 1943), held that Burglary in the Third Degree is a CIMT when conviction record shows defendant broke and entered a building with intent to commit larceny. (Section 404(1) of the New York Penal Code).

A person who (1) with intent to commit a crime therein, breaks and enters a building; or (2) being in any building, commits a crime therein and breaks out of the same, is guilty of Burglary in the Third Degree.

See also Matter of Leyva, 16 I. & N. Dec. 118 (BIA 1977) (459 California Penal Code); Matter of Fentescu, 18 I. & N. Dec. 244 (BIA 1982) (Chapter 38 Section 19.1 of Illinois

Revised Statutes); Matter of Garcia-Garrocho, 19 I. & N. Dec. 423 (BIA 1986) New York Statute First Degree Burglary; Pichardo v. INS, 104 F.3d 756 (5th Cir. 1997); DeMore v. Kim, 538 U.S. 510 (2003)(alien convicted of 2 CIMTS; Cal. first degree burglary and petty theft with priors).

9. Extortion is a CIMT - Matter of F-, 3 I. & N. Dec. 361 (BIA 1949). Demanding property with menaces (Criminal Code of Canada, Section 451).

(a) Sending Threatening Letters Through Mails with Intent to Extort - Matter of G-T-, 4 I. & N. Dec. 446 (BIA 1951), 18 U.S.C. Section 338, 338(a).

(b) Theft by Bailee is a CIMT (Article 1429, Volume 3, Vernon's Annotated Penal Code of Texas) - See Matter of G- T-, 4 I. & N. Dec. 446 (BIA 1951).

10. Fraud - Any crime involving Fraud is a CIMT - Burr v. INS, 350 F.2d 87, 91 (9th Cir. 1965), cert. denied, 383 U.S. 915 (1966).

(a) Concealing Assets in Bankruptcy - Medich v. Burmaster, 24 F.2d 57 (8th Cir. 1928).

(b) Encumbering Mortgaged Property with Intent to Defraud - Millard v. Tuttle, 46 F.2d 342 (5th Cir. 1930):

Conviction of an offense with intention to defraud. . .on its face . . . implies moral turpitude....I think it hardly necessary to cite authority to support the proposition that the commission of a fraud involved moral turpitude.

(c) Fraudulently Issuing Check Without Funds - U.S. ex rel. Portada v. Day, 16 F.2d 328 (S.D.N.Y. 1926). Plea of guilty to issuing check without sufficient funds under Penal Code of California Section 476(a) held conviction for act involving moral turpitude, requiring deportation, notwithstanding showing of apparent innocence, and that plea made on advice of counsel. Burr v. INS, 350 F.2d 87, 91 (9th Cir. 1965). Matter of McLean, 12 I. & N. Dec. 551 (BIA 1967), cites Section 476(a) of the California Penal Code and compares Section 40-14-20 of Colorado Revised Statutes (1963). People v. Pitts, 196 Cal. App. 2d 841, 16 Cal Rpt'r. 879 (1961); Jordan v. DeGeorge, 341 U.S. 223 (1951). Matter of Khalik, 17 I. & N. Dec. 518 (BIA 1980) (Michigan Compiled Law Section 750.131); Matter of Zangwill, 18 I. & N. Dec. 22 (BIA 1981) (Florida Statutes Section 832.05); Matter of Logan, 17 I. & N. Dec. 367 (BIA 1980) (Arkansas Statutes Section 67-720); Matter of Westman, 17 I. & N. Dec. 50 (BIA 1979) (Washington State Criminal Code Section 9.54.010). Matter of Bart, Int. Dec. 3166 (BIA 1992) issuance of a bad check requires guilty knowledge under Georgia Code Section 16-9-20(a).

(d) Illegal Use of a Credit Card - Matter of Chouinard, 11 I. & N. Dec. 839 (BIA 1966). Fraud implied notwithstanding the statute makes no specific reference to such

intent. This is especially true where scienter is an element of the offense defined by the statute. (Section 28.416(1), Michigan Statutes Annotated).

Obtaining credit by false device, Sec. 219a. Any person who knowingly obtains or attempts to obtain credit, or purchases or attempts to purchase any goods, property or service, by the use of any false, fictitious or counterfeit credit card, credit number, telephone number or other credit device, or by the use of any credit card, credit number, telephone number or other credit device of another without the authority of the person to whom such card, number or device was issued, or by the use of any credit card, credit number, telephone number or other credit device in any case where such cards, number or device has been revoked and notice of revocation as provided in section 219b, has been given to the person to whom issued, is guilty of a misdemeanor. (CL '48, Section 750.219a.)

FRAUDULENT USE OF CREDIT CARDS : Alabama penal code is a CIMT. Balogun v Ashcroft 270 F.3d 274 (5th Cir.2001)

(e) Passing Forged Instruments - Matter of Yanez-Yaquez, 13 I. & N. Dec. 449 (BIA 1970).

(f) Attempted Fraud - Matter of Katsanis, 14 I. & N. Dec. 266 (BIA 1973).

Article 386 of the Greek Penal Code of 1950 (Fraud) (Apaté):

(1) Whoever causes damage to the property of another with the intention of procuring unlawful benefit for himself or a third person by knowingly leading such other into an act, sufferance, or omission by means of representing falsehoods as facts or misrepresenting or concealing the existing facts, shall be punished by imprisonment for not less than three months and, if the damage is especially great, not less than two years.

(g) Using the Mails to Defraud - Ponzi v. Ward, 7 F. Supp. 736 (D. Mass. 1934). Crimes of Fraud are CIMT and, therefore, use of the mails in order to defraud would amount to a crime which, of necessity, involve moral turpitude.

(h) Confidence Game - Rukavina v. INS, 303 F.2d 645 (7th Cir. 1962). Obtaining money by means of the confidence game involves an act of cheating or swindling.

(i) Issuing Worthless Checks - Matter of Ohnhauser, 10 I. & N. Dec. 501 (BIA 1964). Passing a bad check (Florida Statute - Bull v. INS, 790 F.2d 869 (11th Cir. 1986)).

(j) Selling Colored Margarine With Intent to Defraud - Matter of P-, 6 I. & N. Dec. 795 (BIA 1955).

(k) Conviction of Making a False Statement in the Acquisition of a Firearm from a Licensed Dealer - 18 U.S.C. 922(a)(6). It is a crime for any person "knowingly to make

any false or fictitious statement ... intended or likely to deceive such . . . dealer ... with respect to any fact material to the lawfulness of the sale . . . ." Matter of Acosta, 14 I. & N. Dec. 338 (BIA 1973).

(l) Securities Fraud - Matter of McNaughton, 16 I. & N. Dec. 569 (BIA 1978) (Canadian Law).

(m) Issuing Check Without Funds - Matter of Kahlek, 17 I. & N. Dec. 518 (BIA 1980) (Mich. Law). BIA found fraud inherent.

(n) Conspiracy to Defraud the Public - Matter of Bader, 17 I. & N. Dec. 525 (BIA 1980) (Canadian Criminal Code Section 423(1)(d) and 338(1)).

(o) Welfare Fraud - Miller v. INS, 762 F.2d 21 (3d Cir. 1985). See also Rodriguez v. Ashcroft, 2004 WL 515617 (9th Cir. March 3, 2004); Amoya v. INS, 36 F.3d. 992 (10th Cir 1994).

11. Grand Theft is a CIMT- Matter of Chen, 10 I. & N. Dec. 671 (BIA 1964). See Section 487, Penal Code of California ("When the property is taken from the person of another."); Garcia-Lopez v. Ashcroft, 334 F.3d 840 (9th Cir. 2003)(Cal. statute is a "wobbler" statute, i.e. the offense is treated as either a misdemeanor or felony; BIA is bound by state court's designation of offense as a misdemeanor; misdemeanor can qualify under the petty offense exception).

See Matter of Burbano, I.D. 3229 (BIA 1994).  
Auto theft Lukowski v. INS 279 F.3d 644(8th Cir.2002)

12. Transporting Stolen Property is a CIMT - Matter of Fernandez, 14 I. & N. Dec. 24 (BIA 1972). Transporting forged securities in interstate commerce (18 U.S.C. Section 2314), also in foreign commerce, Matter of Acosta, 14 I. & N. Dec. 338 (BIA 1973).

13. Malicious Destruction of Property is a CIMT.

(a) Matter of M-, 3 I. & N. Dec. 272 (BIA 1948). Killing two dogs belonging to another with an axe. Article 6, section 23-576, volume 3 of the Oregon Penal Code, reads as follows:

If any person shall maliciously or wantonly kill, wound, disfigure, or injure any animal, the property of another, or shall willfully administer any poison to any such animal, or shall maliciously expose any poison with intent that the same shall be taken by any such animal, or shall maliciously or wantonly, in any manner or by any means, not otherwise particularly specified in this chapter, destroy, or injure any personal property of another, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than 6 months nor more than 3 years, or by imprisonment in the county jail not less than 3 months nor more than 1 year, or be fined not less than \$50 nor more than \$1,000 (L. 1864).

Section 23-111 of the Oregon Penal Code provides that the terms "malice" and "maliciously" when so employed, import a wish to vex, annoy, or injure another person, established either by proof or presumption of law. Section 23-113 thereof provides that the term "wantonly" when applied to the commission of an act, implies that the act was done with a purpose to injure or destroy without cause and without reference to any particular person.

(b) Attempt to Wreck a Train Operated in Interstate Commerce - Matter of P- y M-, 4 I. & N. Dec. 461 (BIA 1951); 18 U.S.C.A. Section 1992.

Section 1992, rev. title 18 U.S.C.A.:

Whoever willfully derails, disables, or wrecks any train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce by any railroad; or

Whoever willfully sets fire to, or places any explosive substance on or near, or undermines any tunnel, bridge, viaduct, trestle, track signal ... or appurtenance used in the operation of any such railroad in interstate or foreign commerce, or otherwise makes any such tunnel, bridge, viaduct, trestle, track, etc. ... unworkable, unusable, or hazardous to work or use, with the intent to derail, disable, or wreck a train, engine, motor unit, or car used, operated or employed in interstate or foreign commerce; or

Whoever willfully attempts to do any of the aforesaid acts or things-

Shall be fined not more than \$10,000 or imprisoned not more than 20 years, or both.

(c) Tampering with Motive Power of a Vessel - Matter of G-, 4 I. & N. Dec. 409 (BIA 1951). Violation of 18 U.S.C. Section 502, to wit:

"Conspiracy to tamper and attempt to tamper, and tampering and attempting to tamper, with the motive power of a vessel while said vessel was within the jurisdiction of the United States, with intent to injure and endanger the safety of the vessel. . . ."

(See also Matter of C-, A5 956 631 (BIA 1943) (unreported)).

14. Obtaining Money By False Pretenses - Matter of B-, 6 I. & N. Dec. 702 (BIA 1955):

(a) 18 U.S.C. 912 is a divisible statute and defines two separate offenses. First, "whoever falsely assumes or pretends to be an officer or employee, acting under the authority of the United States or any department, agency or officer thereof, and acts as such"; or, second, "in such pretended character demands or obtains any money, paper, document, or thing of value." Conviction for violation of the second portion necessarily involves an element of fraud; and fraud being present, the crime is one involving moral turpitude.

(b) Obtaining Money by False Pretense, Section 304(a)(1) of the Canadian Criminal Code was considered a CIMT and was found comparable to 22 Washington, D.C. Code

1410 (Knowingly negotiating a worthless check). See *Squires v. INS*, 689 F.2d 1276 (6th Cir. 1982).

15. Bribery of an Amateur Athlete - U.S. ex rel. *Sollazzo v. Esperdy*, 285 F.2d 341 (2d Cir. 1961), cert. denied, 366 U.S. 905 (1961). The crime of bribing a participant in an amateur sport is one which in the light of contemporary standards inherently involves moral turpitude.

New York Penal Law, Section 382(1) is entitled: Bribery of participants in professional or amateur games, sports, contests and horse racing. It provides: Whoever gives, promises or offers to any professional or amateur baseball, football, hockey, polo, tennis, or basketball player or boxer or any player or referee or other official who participates or expects to participate in any professional or amateur game or sport or any jockey, driver, groom or any person participating or expecting to participate in any horse race, including owners of race tracks and their employees, stewards, trainers, judges, starters or special policeman, or to any manager, coach or trailer (sic) of any team or participant or prospective participant in any such game, contest or sport, any valuable thing with intent to influence him to lose or try to lose or cause to be lost or to limit his or his team's margin of victory, or in the case of a referee or other official to affect his decisions or the performance of his duties in any way, in a baseball, football, hockey or basketball game, boxing, tennis or polo match or a horse race or any professional or amateur sport, or game, in which such player or participant or jockey or driver or referee or other official, in taking part or expects to take part, or has any duty or connection therewith, is guilty of a felony, punishable by imprisonment for not less than one year, nor more than ten years and by a fine of not more than ten thousand dollars.

16. Malicious Trespass - Florida Statutes Section 821.18 where the information alleged trespass with intent to commit petty larceny. *Matter of Esfandiary*, 16 I. & N. Dec. 659 (BIA 1979).

#### CRIMES AGAINST PROPERTY NOT INVOLVING MORAL TURPITUDE

1. Breaking and Entering/Unlawful Entry - *Matter of M-*, 2 I. & N. Dec. 721 (BIA 1946). Burglary in the 3rd Degree not CIMT - Section 404 N.Y. Penal Law.

Section 404 of the New York Penal Law reads:

A person who:

1. With intent to commit a crime therein, breaks and enters a building, or a room, or any part of a building; or,
2. Being in any building, commits a crime therein and breaks out of the same, is guilty of burglary in the third degree.

These offenses may or may not involve moral turpitude, the determining factor being whether the crime intended to be committed at the time of entry or prior to breaking out involves moral turpitude. Section 404 of the N.Y. Penal Law involves moral turpitude only if the crime intended to be committed at the time of entry or committed prior to breaking out involved such conduct.

A crime defined by statute may or may not require an evil intent and, therefore, may not involve moral turpitude Matter of M-, 9 I. & N. Dec. 132 (BIA 1960) (Matter of G-, 1 I. & N. Dec. 403 (BIA 1943)). If the definition of the crime eliminates motive or intent, and the alien may be convicted although his conduct was prompted by innocent motives, then his crime does not involve moral turpitude. U.S. ex rel. Mylius v. Uhl, 203 F. 152 (S.D.N.Y. 1913), aff'd, 210 F. 860 (2d Cir. 1914); U.S. v. Carrollo, 30 F. Supp. 3 (W.D. Mo. 1939).

2. Possession of Stolen Property - Not CIMT where property was acquired without guilty knowledge. Matter of K-, 2 I. & N. Dec. 90 (BIA 1944). German statute - Section 259 of the German criminal code provides as follows:

Who conceals purchase, takes as pledge or otherwise, or who participates in the sale of goods of which he knows or must assume on the basis of the given conditions that they have been acquired by means of any criminal act, shall be punished with imprisonment.

\*3. (a) Malicious Mischief. *Rodriquez-Herrera v. INS*, 52 F.3d 238 (9th Cir. 1995). Washington Criminal Statute 9A.48.080(1)(a) and 9A.04.110(12). The bare presence of some degree of evil intent is not enough to convert a crime that is not serious into one of moral turpitude. In this case some automobiles were damaged and the court found the act did not have the required baseness or depravity and therefore was not a CIMT.

(b) Damaging Private Property (Without Intent) - Matter of N, 8 I. & N. Dec. 466 (BIA 1959) (Malicious Mischief), Section 692 Delaware Penal Code. Delaware malicious mischief statute (Section 692, Delaware Penal Code) encompasses crimes which both do and do not involve moral turpitude. When record of conviction fails to show with particularity that misconduct was inherently base or depraved, finding of moral turpitude cannot be made.

The crime of Malicious Mischief is defined by Section 692 of the Delaware Penal Code as follows:

Whoever unlawfully, maliciously and mischievously destroys or injures any real or personal property, or any other thing of value, to the value of less than \$100, shall be fined not less than \$25 nor more than \$500, or imprisoned not more than six months, or both.



Where the statute consists of divisible sections, not all involving moral turpitude, then to determine whether the alien's crime entailed moral turpitude the record of conviction must be referred to.

\*4. Failure to Pay Ship Fare - United States ex rel. Fontan v. Uhl, 16 F. Supp. 428 (D.C., S.D.N.Y. 1936). Not a CIMT where offense not coupled with any larceny in obtaining passage, and passage ticket not stolen by the alien. Alien was merely a stowaway.

\*5. Depositing a Slug in a Coin Box - Matter of G-, 2 I. & N. Dec. 235 (BIA 1945), involved violation of Section 1293(c) of the Penal Law of New York. Fraudulent intent not an element of the crime. Section 1293(c) reads:

Any person who shall operate or cause to be operated or who shall attempt to operate or attempt to cause to be operated any automatic vending machine, slot machine, coin-box telephone or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or services, by means of a slug or of any false, counterfeited, mutilated or sweated coin, or by any means, method, trick, or device whatsoever not lawfully authorized by the owner, lessee or licensee of such machine, coin-box telephone or receptacle; or who shall take, obtain or receive from or in connection with any automatic vending machine, slot machine, coin-box telephone or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, any goods, wares, merchandise, gas, electric current, article of value, or the use or enjoyment of any telephone or telegraph facilities or service, or of any musical instrument, phonograph or other property, with depositing in and surrendering to such machine, coin-box telephone or receptacle lawful coin to the amount required therefor by the owner, lessee or licensee of such machine, coin-box telephone or receptacle, shall be guilty of a misdemeanor and punishable (sic) by imprisonment for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both fine and imprisonment.

See also Matter of M-, 7 I. & N. Dec. 147 (BIA 1956), where different section of the same statute dealing with use of slugs is divisible, the portion not requiring intent is not CIMT.

6. Passing Check Without Sufficient Funds Not a CIMT - Matter of Colbourne, 13 I. & N. Dec. 319 (BIA 1969). Where intent to defraud is not an element of the statute. (Section 835(a), Title 14, Virgin Islands Code) - Overrules Matter of M-, 9 I. & N. Dec. 743 (BIA 1962). The Virgin Islands Code (Title 14, section 835(a)) provides, in part, as follows:

Whoever make, draws, utters, or delivers any check, draft or order for the payment of money - (1) to the value of \$100 or more upon any bank or other depository knowing at the time of such making, drawing, uttering or delivering that the maker or drawer has not sufficient funds in, or credit with, such bank or other depository for the payment of such

check, draft or order, in full, upon its presentation, shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both ....

The second subdivision of Section 835(a) provides for a fine of not more than \$200 or imprisonment of not more than one year, or both, where the value of the check was less than \$100. Section 835(b) provides that the making of a check, the payment of which is refused by the drawee, shall be a prima facie evidence of the maker's knowledge of insufficient funds in such bank if the maker has not paid the drawee the amount due together with costs within ten days after receiving such notice that such check has not been paid by the drawee. See also Matter of Zangwill, 18 I. & N. Dec. 22 (1981)(Florida Stat. Sec. 948.01(3)).

Matter of Balao, Int. Dec. 3167 (BIA 1992), intent to defraud is not an essential element of the crime of passing bad checks under Title 18, Section 4105(a)(1) of Pennsylvania Statutes, therefore this is not a CIMT.

7. Loan Sharking - Matter of B-, 6 I. & N. Dec. 98 (BIA 1954), conspiracy to violate Sections 340 and 357 of the Banking Law of New York, is not a crime involving moral turpitude since those sections are only a licensing and regulatory enactment. "Loan Sharking" (usury), although a crime by statute and usually commercialized in nature, is not equated to commercialized vice.

\*8. Making False Statements to a Federal Agency - Not necessarily a CIMT (construing 18 U.S.C. Section 1001, see Neely v. U.S., 300 F.2d 67 (9th Cir.), cert. denied, 369 U.S. 864 (1962)); Hirsch v. INS, 308 F.2d 562 (9th Cir. 1962). "Evil intent" does not necessarily involve intent to defraud. One must review a copy of the indictment to determine how the crime is set forth. If an intent to defraud is set forth it will be considered a CIMT. Former Section 80 of Title 18 U.S.C. is now 18 U.S.C. Sections 287 and 1001:

Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. (As amended June 18, 1934, c. 587, 48 Stat. 996; April 4, 1938, c. 60, 52 Stat. 197.) (Emphasis added.)

9. Convictions for Making False Statements (in violation of Section 106A(a) of the Unemployment Insurance Act of Canada, as amended) - Is not a CIMT. Matter of Di Filippo, 10 I. & N. Dec. 76 (BIA 1962), holds that intent to mislead is not required by the statute, but only knowledge of the falsity of the statement. The intent with which the false statement was made is not material. Section 106A of the Unemployment Insurance Act of Canada, as amended, reads as follows:

Every person is guilty of an offense who

- (a) in relation to any claim for benefits makes a statement or representation that he knows to be false or misleading or
- (b) being required under this Act or the regulations to furnish information, furnishes any information or makes any representation that he knows to be false or misleading. (p. R-7.)

10. Conducting an Illegal Lottery - U.S. v. Carrollo, 30 F. Supp. 3 (D. Mo. 1939). The crime complained of here is not an act of baseness, vileness or depravity that is required in CIMT. Moral turpitude must exist entirely apart from the fact that a statute has been violated. Must look at the act.

11. Joyriding - Matter of M-, 2 I. & N. Dec. 686 (BIA 1946), is not a CIMT (Section 285(3) of the Criminal Code of Canada). ("Unlawful taking of an automobile from a street, road or highway without intent to operate the same without the consent of the owner.") (See also Matter of D-, 1 I. & N. Dec. 143 (BIA 1941) which refers to California Vehicle Code, Section 503 (1935)).

\*12. Possession of Burglary Tools - Matter of S-, 6 I. & N. Dec. 769 (BIA 1955). Possession of Burglary Tools in violation of Section 464(b) of the Canadian Criminal Code is not a CIMT unless accompanied by an intent to use the tools to commit a crime defined as one involving moral turpitude. Section 464(b) of the Canadian Criminal Code provides as follows:  
Everyone is guilty of an indictable offense and liable to five years' imprisonment who is found (b) having in his possession by day any such instrument with intent to commit any indictable offense.

13. Juvenile Delinquency - Is not a crime, and is not subject to the deportation statutes. See Matter of F-, 4 I. & N. Dec. 726 (BIA 1952) - Federal Act defining "juvenile"; Matter of M- U-, 2 I. & N. Dec. 92 (BIA 1944) - Commission of theft by juvenile in California is an act of juvenile delinquency for which an alien is not deportable.

## C. SEXUAL AND FAMILY CRIMES

In the area of sexual and family crimes, it is particularly difficult to discern a distinguishing set of principles which the courts apply to determine whether the particular offense involved moral turpitude for deportation or exclusion purposes. In some cases

the presence or absence of violence seems to be the important factor; in others, the courts consider whether the offense is "malum in se" or "malum prohibitum"; in still others, the presence or absence of criminal intent is considered determinative.

#### SEXUAL AND FAMILY CRIMES FOUND TO INVOLVE MORAL TURPITUDE

1. (pg. 34) Assault with Intent to Commit Abortion.
2. Attempted Assault 2nd Degree (with Intent to Commit Carnal Abuse and Rape).
3. Sexual Assault/Indecent Assault.
4. Adultery.
- \*5. Bigamy.
6. (pg. 35) Spousal abuse.
7. Practicing Prostitution.
8. Maintaining a House of Prostitution.
9. Renting Rooms with Knowledge That They Were to be Used for Prostitution.
10. Securing Another for Prostitution.
11. (pg. 36) Sodomy.
- \*12. Disorderly Conduct.
  - (a) Soliciting Men to Commit Crimes Against Nature.
  - (b) Soliciting People to Engage in Lewd or Dissolute Conduct.
13. Gross Indecency.
- \*14. Contributing to the Delinquency of a Minor (Sexual Acts).
15. (pg. 36) Taking Indecent Liberties with a Child.
16. Child Abuse.
17. Incest.

18. Statutory Rape and Rape.
- \*19. Abandonment of a Child.
20. Oral Sexual Perversion.

#### SEXUAL AND FAMILY CRIMES NOT INVOLVING MORAL TURPITUDE

1. (pg. 37) Bastardy.
2. Vagrancy.
3. Maintaining a House of Prostitution Where Knowledge is Not an Element.
4. Abduction for the Purpose of Marriage.
5. (pg. 38) Fornication.
6. Mailing an Obscene Letter.
7. Indecent Exposure.
8. Disorderly Conduct.
  - (a) Gross Indecency.
  - (b) Contributing to the Delinquency of a Minor.
  - (c) Indecent Exposure.
9. Abandonment of a Minor Child.
10. Indecent Act.

#### SEXUAL AND FAMILY CRIMES FOUND TO INVOLVE MORAL TURPITUDE

1. Assault with Intent to Commit Abortion - Matter of M-, 2 I. & N. Dec. 525 (BIA 1946) - Subdivision of Section 242 of the New York Penal Code. Held to be a CIMT.
2. Attempted Assault, Second Degree (With Intent to Commit Carnal Abuse and Rape - Matter of Beato, 10 I. & N. Dec. 730 (BIA 1964) - See Section 242(5) of the New York Penal Code. Held to be a CIMT.
3. Sexual Assault/Indecent Assault

Sexual Assault in the first degree. Nebraska Statutes. Sect. 28-319(1)(c). The Respondent's victim was a 13 year old girl and the crime involved sexual penetration. This crime is a CIMT. In Re Mendez - Moralez Interim Decision # 3272.

Indecent Assault is a CIMT - Matter of Z-, 7 I. & N. Dec. 253 (BIA 1956) - Section 6052 of the General Statutes of Connecticut, Revision of 1930. The statute reads as follows:

Any person who shall commit an indecent assault upon another person shall be imprisoned not more than ten years. The overt act or acts of which such assault consists need not be otherwise described in a complaint under this section than as an indecent assault, unless the accused shall request the court that it be particularly described in such complaint. It shall be no defense to a complaint under this section that the person assaulted shall consent to the act of violence or to the act of indecency, and this section shall not affect the penalty for sodomy.

The BIA used case law to further define the statute. It held that:

An indecent assault has many of the elements of assault with intent to rape, but falls short of the latter in that there is no intent to commit the graver offense. An indecent assault consists of the act of a male person taking indecent liberties with the person of a female or fondling her in a lewd and lascivious manner without her consent and against her will, but with no intent to commit the crime of rape.

4. Adultery is a CIMT - Matter of A-, 3 I. & N. Dec. 168 (BIA 1948) - Section 14, Chapter 272, Laws of Massachusetts, Annotated, Volume 9. Held to be a CIMT. Statute applies to "a married man who has sexual intercourse with a woman not his wife, an unmarried man who has sexual intercourse with a married woman or a married woman who has sexual intercourse with a man not her husband."

\*5. Bigamy could be a CIMT.

a. Matter of E-, 2 I. & N. Dec. 328 (A.G. 1945) - Section 10138, Nevada Compiled Laws (1929). Held to be a CIMT.

b. Forbes v. Brownell, 149 F. Supp. 848 (D.C.D.C. 1957) - Canadian Criminal Code, Section 308. Held not to be a CIMT. Matter of E-, supra, distinguished. Forbes held alien not guilty of CIMT since mens rea not essential element of statute; Matter of E- - statute required mens rea:

Some states hold that mens rea is an essential element of the crime of bigamy. People v. Vogel, 1956, 43 Cal.2d 798, 299 P.2d 850; Robinson v. State, Ga. 1909, 6 Ga. App. 696, 65 S.E. 792; Squire v. State, Ind. 1874, 46 Ind. 459; State v. Cain, La. 1902, 106 La. 708, 31 So. 300; Baker v. State, Neb. 1910, 86 Neb. 775, 126 N.W. 300, 27 L.R.A., N.S., 1097; State v. Stank, Ohio 1883, 9 Ohio Dec. Reprint 8; Adams v. State, Tex. 1929, 110

Tex. Cr. R. 20, 7 S.W.2d 528. Other states do not. See Bigamy: Good Faith Belief In Dissolution of a Former Marriage, 27 Cal. L. Rev. 746 (1939).

6. Spousal Abuse. *Grageda v. INS*, 12 F.3d 919 (9th Cir. 1993), Calif. Penal Code 273.5(a), willful infliction of an injury upon a spouse is a base and depraved act and is classified as a CIMT. See also Corporal injury of a spouse. California Penal Code, § 273.5(a). California courts found this violation to include “cruel or inhuman corporal punishment or injury.” This crime is a CIMT. *Matter of Tran*, 21 I. & N. Dec. 291 (BIA 1996). The infliction of bodily upon a person with whom one has such a familial relationship is an act of depravity which is contrary to accepted moral standards.

*Matter of Deanda-Romo*, 23 I. & N. Dec. 597 (BIA 2003), held two Texas misdemeanor convictions of assault with bodily injury to a spouse were CIMTs.

*Matter of Garcia-Hernandez*, 23 I. & N. Dec. 590 (BIA 2003), held California misdemeanor conviction for corporal injury to a spouse was a CIMT. The conviction qualified for the petty offense exception at 212(a)(2)(A)(ii), even though alien was also convicted of battery, a non-CIMT. The limitation that the alien have been convicted of only one crime is exceeded only by the commission of a second CIMT, not by the commission of any other type of crime.

7. Practicing Prostitution is CIMT - *Matter of W-*, 4 I. & N. Dec. 401 (Central Office 1951) - Seattle, Wash., City Ordinance 73095, Section 1 (practicing prostitution).

8. Maintaining a House of Prostitution is a CIMT.

a. *Matter of W-*, 4 I. & N. Dec. 401 (C.O. 1951) - Seattle City Ordinance.

b. *Matter of A-*, 5 I. & N. Dec. 546 (1953) - (English Law 48 and 49 Victoria c. 69): Knowingly permits premises to be used as a brothel. *Matter of W-*, 3 I. & N. Dec. 231 (1941) - Canadian Criminal Code, Sec. 229 (1) and (2): Keeping a common bawdy house.

9. Renting Rooms with Knowledge that they were to be Used for Prostitution is a CIMT - *Matter of Lambert*, 11 I. & N. Dec. 340 (1965) - Section 26-42 of the City of Tampa Code.

10. Securing Another for Prostitution is a CIMT - *Matter of Lambert*, 11 I. & N. Dec. 340 (BIA 1965) - Section 26-42 of the City of Tampa Code.

11. Sodomy is a CIMT - *Matter of S-*, 8 I. & N. Dec. 409 (BIA 1959) (Sec. 158 Michigan Public Acts). *Velez-Lozano v. INS*, 463 F.2d 1305 (D.C. Cir. 1972) (Consensual Sodomy), Sec. 18.1 - 212, Code of Virginia and Sec. 22 D.C. Code 3502, District of Columbia.

\*12. Disorderly Conduct could be a CIMT.

a. Soliciting Men for the Purpose of Committing a Crime Against Nature. Babouris v. Esperdy, 269 F.2d 621 (C.A. 2d Cir. 1959), cert. denied, 362 U.S. 913 (1960). Disorderly conduct is a divisible statute but that portion relating to the solicitation of men to perform unnatural acts is a CIMT. Matter of G-, 7 I. & N. Dec. 520 (BIA 1957). (Both cases Section 722.8, New York Penal Code.)

b. Soliciting to Engage in Lewd and Dissolute Conduct - Sec.647(a), California Penal Code, and Chapter 27, Sec. 60 of the Code of the City of Phoenix, Arizona.

13. Gross Indecency - Matter of S-, 8 I. & N. Dec. 409 (BIA 1959) (Sec. 338 Michigan Public Acts).

\*14. Contributing to the Delinquency of a Minor could be a CIMT (Sexual Act) - Matter of C-, 5 I. & N. Dec. 65 (BIA 1953). Participating in lewd acts with a minor (Title 23, Ch. 10, Article 3, Section 1034 of the General Laws of the State of Oregon). The Board found that this was a divisible statute which may or may not involve moral turpitude. The determination as to whether the offense involves moral turpitude is based on the record of conviction, which includes the complaint, information or indictment. When the record of conviction clearly shows lewd and lascivious acts involved in the commission of the crime, the particular offense involves moral turpitude.

A conviction under Illinois Revised Statutes Ch. 38 par. 11-5, for contributing to the sexual delinquency of a child (misdemeanor is a CIMT).

15. Taking Indecent Liberties with a Child.

a. Matter of Garcia, 11 I. & N. Dec. 521 (BIA 1966) (Section 336, Michigan Penal Code). Any male over 16 years of age who shall assault and take indecent liberties with a female child under the age of 16 without committing or intending to commit the crime of rape shall be guilty of a felony. The Board found that a violation of this statute would be a CIMT.

b. Indecent liberties conviction in the state of Washington held to be a CIMT. Morales-Alvarado v. INS, 655 F.2d 172 (9th Cir. 1981). The victim in this case was an 8-year-old girl.

16. Child Abuse. Guerrero de Nodahl v. INS, 407 F.2d 1405 (9th Cir. 1969), held a conviction under the Calif. Penal Code 273(d) for the infliction of any cruel or inhuman corporal punishment upon a child is a CIMT. Accord Garcia v. Attorney General, 329 F.3d 1217 (11th Cir. 2003), held that the Florida offense of aggravated child abuse was a CIMT.

17. Incest is a CIMT - Matter of Y-, 3 I. & N. Dec. 544 (C.O. 1949). Incest is an affront to decency and morality, no less offensive to the moral sense of the community because the relationship is one of affinity rather than consanguinity (step-daughter and step-father). Sec. 13023 of the Criminal Code of Ohio. See Gonzalez-Alvarado v INS,



39 F.3d 245 (9th Cir. 1994) Washington State, 1st degree incest; Pichardo v. INS, 104 F.3d 756 (5th Cir. 1997).

18. Statutory Rape is a CIMT - United States v. Grey, 87 Fed. Appx. 254, 2004 WL 65248 (3rd Cir. 2004); Gonzalez-Alvarado v. INS, 39 F.3d 245 (9th Cir. 1994); Castle v. INS, 541 F.2d 1064 (4th Cir. 1976); Marciano v. INS, 450 F.2d 1022 (8th Cir. 1971).

Matter of M- C-, 9 I. & N. Dec. 280 (BIA 1961). The act of intercourse with a female under the age of 18 years. California Penal Code, Sec. 261. Rape - Matter of B-, 5 I. & N. 538 (BIA 1953). It is well established that the crime of rape, being one which inherently reflects moral depravity involves moral turpitude, Ng Sui Wing v. United States, 46 F.2d 755 (C.C.A. 7, 1931).

\*19. Abandonment of a Minor Child could be a CIMT - Matter of R-, 4 I. & N. Dec. 192 (C.O. 1950). In order to be a crime involving moral turpitude, two elements must be present.

1. The failure to provide support must be willful and
2. That the child be in destitute circumstances.

Section 351.30, Wisconsin Statutes.

20. Oral Sexual Perversion is a CIMT - Matter of Leyva, 16 I. & N. Dec. 118 (BIA 1977). Section 288(a) of the California Penal Code.

#### SEXUAL AND FAMILY CRIMES NOT INVOLVING MORAL TURPITUDE

1. Bastardy is not a CIMT and is no longer law - Matter of D-, 1 I. & N. Dec. 186 (BIA 1941).
2. Vagrancy is not a CIMT and is no longer law - Matter of G- R-, 5 I. & N. Dec. 18 (C.O. 1952) (BIA 1953) Sec. 647.5, California Penal Code. "Every idle, or lewd or dissolute person."
3. Maintaining a House of Prostitution Where Knowledge is not an Element is not a CIMT - Matter of A-, 3 I. & N. Dec. 168 (BIA 1948).
4. Abduction for the Purpose of Marriage is not a CIMT (Divisible statute) - Matter of Farinas, 12 I. & N. Dec. 467 (BIA 1967).
5. Fornication is not a CIMT - Matter of R-, 6 I. & N. Dec. 444 (BIA 1954).
6. Mailing an Obscene Letter is not a CIMT - Matter of D-, 1 I. & N. Dec. 190 (BIA 1942).

7. Indecent Exposure is not a CIMT - Matter of H-, 7 I. & N. Dec. 301 (BIA 1956) (Michigan Law). Matter of Mueller, 11 I. & N. Dec. 268 (BIA 1965) (Wisconsin Law).
8. Disorderly Conduct generally is not a CIMT where evil intent is not necessarily involved).
  - a. Gross Indecency - Matter of S-, 5 I. & N. Dec. 576 (BIA 1953).
  - b. Contributing to the Delinquency of a Minor - Matter of P-, 2 I. & N. Dec. 117 (BIA 1944).
  - c. Indecent Exposure - Matter of Mueller, 11 I. & N. Dec. 268 BIA 1965).
9. Abandonment of a Minor Child is not a CIMT - Matter of E-, 2 I. & N. Dec. 134 (BIA1944; A.G. 1944).
10. Indecent Act - *Toutounjian v. INS*, 959 F.3d 598 (W.D. N.Y. 1997). Two convictions. First for sexual assault. Canadian Criminal Code 271(1)(b). Second for willful commission of an indecent act in a public place in the presence of one or more persons. Canadian Criminal Code 173(1)(a).

Court found that the “indecency” statute is divisible or separable and so drawn as to include within its definition crimes which do and some which do not involve moral turpitude.

\*\*\* US courts are not bound by the finding of the Canadian court as to whether foreign conviction is a CIMT

\*\*Reckless Conduct - This crime involves reckless conduct. To find moral turpitude, the element of a reckless state of mind must be coupled with an offense involving the infliction of serious bodily injury. See *Matter of Falaau* Int. Dec. 3285 (BIA 1996). This crime does not involve moral turpitude as not serious bodily injury was intended and none occurred.

#### D. CRIMES AGAINST THE AUTHORITY OF GOVERNMENT

The main determining factor as to the presence of moral turpitude in offenses committed against the Government or Governmental authorities has usually been the presence of fraud as an element of the offense. Fraud against the Government has been found a CIMT in all cases where intent to pecuniary loss on the Government is an element. *Jordan v. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

#### CRIMES AGAINST THE AUTHORITY OF GOVERNMENT FOUND TO INVOLVE MORAL TURPITUDE

1. (pg. 42) 18 U.S.C. § 2 - Conspires, aids or willfully causes criminal acts to be done. (Yes, if underlying crime is CIMT.)
2. 18 U.S.C. § 4 – Misprision of a Felony
3. 18 U.S.C. § 72 - 18 U.S.C. 494 - Defrauding U.S. by Falsely Issuing a Narcotics Prescription.
4. 18 U.S.C. 201(b)(3) - Offering a bribe to a Government official.
- \*5. 18 U.S.C. 277 - \*\*\* Now 18 U.S.C. 485 - Making, Passing, or Possessing Counterfeit Coins.
6. (pg. 43) 18 U.S.C. 371 - Conspiracy to Commit Offense or to Defraud United States.
7. 18 U.S.C. 338 & 338(a) - Use of Mail to Extort.
8. 18 U.S.C. 472 - Possession of Counterfeit Obligations (With Knowledge).
9. 18 U.S.C. 473 - Buying, Selling, Exchanging, Transferring, Receiving, or Delivering any False, Forged, Counterfeit, or Altered Obligation or Security of the U.S., with Intent that the Same be Passed, Published, or Used as True.
10. 18 U.S.C. 476 - Uttering a Counterfeit Obligation.
11. 18 U.S.C. 487 - Counterfeiting.
12. (pg. 44) 18 U.S.C. 487 & 18 U.S.C. 485 - Conspiracy to Pass Counterfeit Coins.
- \*13.(pg. 44) 18 U.S.C. 545 - Smuggling Merchandise.
14. 18 U.S.C. 657 - Willful Misapplication of Funds of a Savings and Loan Association.
15. 18 U.S.C. 912 - Impersonating a Federal Officer.
16. 18 U.S.C. 922(a)(6) - False Statements in the Acquisition of a Firearm.
- \*17. 18 U.S.C. 1001 - False Statements or Entries.
18. 18 U.S.C. 1029(a)(2) - Fraud and Related Activity in Connection with Access Devices.
19. 18 U.S.C. 1071 - Harboring a Fugitive from Justice.

20. 18 U.S.C. 1341 - Mail Fraud.
21. (pg. 45) 18 U.S.C. 1342 - Using Fictitious Names and Addresses in violation of Postal Laws.
22. 18 U.S.C. 1426(b) - Uttering and Selling False or Counterfeit Immigration Documents.
23. 18 U.S.C. 1503 - Influencing or Injuring an Officer, Juror or Witness.
24. 18 U.S.C. 1542 - False Statements to Obtain a Passport.
- \*25. 18 U.S.C. 1546 - False Statements under Oath in an Alien's Application for Permanent Residence.  
  
Also, Possession of an Altered Immigration Document not a CIMT.
26. 18 U.S.C. 1621 - Perjury.
27. 18 U.S.C. 1708, 1702 - Theft from U.S. Mails.
28. 18 U.S.C. 1951 - (Anti-Racketeering Act) - Interfering with Trade and Commerce by Violence and Threats.
29. 18 U.S.C. 1954 - Taking Kickbacks.
30. (pg. 46) 18 U.S.C. 2312 - Transporting Stolen Autos.
31. (pg. 46) 18 U.S.C. 2313 - Receiving Stolen Autos.
32. 20 U.S.C. 1097(a) - Receiving Funds by False Statement.
33. 21 U.S.C. 174 - Trafficking in Narcotic Drugs.
34. 21 U.S.C. 841 - Distribution of Cocaine.
35. 26 U.S.C. 7206(1) - Knowingly Failing to Report Income.
36. 29 U.S.C. 186(b)(1) - Union Official Unlawfully Accepts a Loan.
37. 41 U.S.C. 51 & 54 - Kickbacks on Government Contracts.
38. 42 U.S.C. 408 - Falsely Representing a Social Security Number.
39. 50 U.S.C. 311 - Violation of Selective Service Act (False Statements).

40. Bribery.
41. (pg.47) False Statement to Obtain Unemployment Benefits.
42. Tax Evasion.

CRIMES AGAINST THE AUTHORITY OF GOVERNMENT NOT INVOLVING  
MORAL TURPITUDE

- \*1. (pg. 47) 8 U.S.C. 1324 - Alien Smuggling. (See alien smuggling CIMT number 1).
2. 8 U.S.C. 1326 - Re-entering or Attempting to Re-enter the United States after Deportation.
3. 18 U.S.C. 336 - Mailing a Letter Concerning a Lottery.
4. 18 U.S.C. 474 - Possession of Counterfeit Securities (Without Intent).
5. 18 U.S.C. 1546 - Possession of an Altered Immigration Document.
6. 26 U.S.C. 1937(a)(1) - Carrying on the Business of a Retail Liquor Dealer Without Having Paid the Special Tax Required by 26 U.S.C. 1397(a)(1).
7. (pg. 48) 26 U.S.C. 5861(d), 5871.
8. (pg. 48) 31 U.S.C. 5324 (1) and (3) Failure to file currency transaction reports or structuring transactions to avoid the reporting requirements.
9. Escape from Prison or Attempted Escape.
10. Failing to Prevent the Commission of a Crime.
11. Gambling Offenses.
12. Failure to Report for Induction.
13. Desertion from Armed Forces.
14. Contempt of Court.
15. Contempt of Congress.

CRIMES AGAINST THE AUTHORITY OF GOVERNMENT FOUND TO INVOLVE  
MORAL TURPITUDE

1. 18 U.S.C. § 2 - Conspires, aids, or willfully causes criminal acts to be done - could be a CIMT if the underlying crime is a CIMT. In this case the BIA remanded for the Service to present evidence on the underlying crime. Matter of Short, Interim Decision 3125 (BIA 1989).

2. 18 U.S.C. § 4 – Misprision of a Felony. *Itani v. Ashcroft*, 298 F.3d 1213 (11th Cir. 2002).

3. 18 U.S.C. § 72 & 18 U.S.C. § 494 - Defrauding the U.S. by Falsely Issuing a Narcotics Prescription. Where fraud is a component of a crime, the crime involves moral turpitude (*Jordan v. De George*, 341 U.S. 223 (1951)). Matter of A-, 5 I. & N. Dec. 52 (BIA 1953).

4. 18 U.S.C. 201(b)(3) - Offering a Bribe to an Immigration Officer; is a CIMT. *Okabe v. INS*, 671 F.2d 863 (5th Cir. 1982).

\*5. 18 U.S.C. 277 - \*\*\* Now 18 U.S.C. 485 - Making, Passing, or Possessing Counterfeit Coins. Could be a CIMT.

a. Making of False, Forged, or Counterfeit Coins

The offense of making counterfeit coins does not involve intent to defraud and is a purely regulatory statute, penalizing an act which is only "malum prohibitum." This offense is not a crime involving moral turpitude.

b. Passing or Possessing Such Coins

The passing or possession of counterfeit coins are CIMTs. The statute specifically contains the words "with intent to defraud." Since the statute is divisible, we must always consider the indictment in order to learn whether the offense charged constitutes a CIMT. Matter of K-, 7 I. & N. Dec. 178 (1956).

6. 18 U.S.C. 371 – Conspiracy to Commit Offense or to Defraud United States.  
--Conspiracy to Violate the Internal Revenue Laws could be when a composite of all specifications in the indictment shows that the object of the conspiracy was to "defraud" the U.S. by avoiding taxes. Matter of M-, 8 I. & N. Dec. 535 (BIA 1960). Matter of E-, 9 I. & N. Dec. 421 (BIA 1961).

--Conspiracy to possess and use documents in violation of 18 U.S.C. § 1546, was held to be a CIMT in *Omagah v. Ashcroft*, 288 F.3d 254 (5th Cir. 2002)

7. 18 U.S.C. 338, 338(a) - Use of Mail to Extort is a CIMT. *Brewer v. U.S.*, 290 F. 807 (2d Cir.), cert. denied, 263 U.S. 707 (1923). Matter of G- T-, 4 I. & N. Dec. 446 (BIA 1951). Matter of M-, 2 I. & N. Dec. 196 (BIA 1944).

8. 18 U.S.C. 472 - Possession of Counterfeit Obligations of the U.S. Knowing the Same to be Counterfeit is a CIMT. *Lozano-Giron v. INS*, 506 F.2d 1073 (7th Cir. 1974).

Matter of P-, 6 I. & N. Dec. 795 (BIA 1955); Janvier v. U.S., 793 F.2d 449 (2d Cir. 1986).

9. 18 U.S.C. 473 - Buying, Selling, Exchanging, Transferring, Receiving, or Delivering any False, Forged, Counterfeit, or Altered Obligation or Security of the U.S. With Intent that the Same be Passed, Published, or Used as True is a CIMT. It was found that a necessary element for a conviction under this section is the intent to defraud. U.S. v. Wilkerson, 469 F.2d 963 (5th Cir. 1972) cert. denied, 410 U.S. 986 (1973). Matter of Martinez, 16 I. & N. Dec. 336 (BIA 1977). Matter of Castro, 19 I. & N. Dec. 692 (BIA 1988).

10. 18 U.S.C. 476 - Uttering a Counterfeit Obligation with Intent to Defraud. The statute contains the language "with intent to defraud" and is a CIMT. Matter of Lethbridge, 11 I. & N. Dec. 444 (BIA 1965).

11. 18 U.S.C. 487 - Counterfeiting.

a. Making Dies or Molds.

b. Possession of Dies or Molds.

The legislative history and court decisions tend to indicate that an intent to defraud the Government is implicit in these offenses. Kaye v. U.S., 177 F. 147 (7th Cir. 1910); Baender v. U.S., 260 F. 832 (9th Cir.), cert. denied, 252 U.S. 586 (1919); Matter of K-, 7 I. & N. Dec. 178 (BIA 1956).

12. 18 U.S.C. 487 & 18 U.S.C. 485 - Conspiracy to Pass Counterfeit Coins. Conspiracy to violate 18 U.S.C. Section 487 is a CIMT. Conspiracy to violate that portion of 18 U.S.C. Section 485 relating to passing or possession of counterfeit coins is a CIMT. Matter of K-, 7 I. & N. Dec. 178 (BIA 1956).

\*13. 18 U.S.C. 545 - Smuggling Merchandise "With Intent to Defraud" the U.S. First paragraph of 18 U.S.C. Section 545 is a CIMT. Matter of D-, 9 I. & N. Dec. 605 (BIA 1962).

14. 18 U.S.C. 657 - Willful Misapplication of Funds of a Savings and Loan Association is a CIMT. Matter of Robinson, 16 I. & N. Dec. 762 (BIA 1979).

15. 18 U.S.C. 912 - Impersonating a Federal Officer is a CIMT. Matter of B-, 3 I. & N. Dec. 270 (BIA 1948); Matter of Gonzalez, 16 I. & N. Dec. 134 (BIA 1977).

16. 18 U.S.C. 922(a)(6) - False Statement in the Acquisition of a Firearm from a Licensed Dealer is a CIMT. Fraud and materiality are essential elements of the crime. Matter of Acosta, 14 I. & N. Dec. 338 (BIA 1973).

\*17. 18 U.S.C. 1001 - False Statements or Entries could be a CIMT. The making of any false, fictitious, or fraudulent statements or representations. The fact that the word "fraudulent" appears does not compel the conclusion that every offense under this clause would involve moral turpitude since the offense may have consisted only of a false and not a fraudulent statement. The alien did not admit that there was any fraudulent statement in Matter of B- M-, 6 I. & N. Dec. 806 (BIA 1955) and the BIA held the offense did not involve moral turpitude. The statute is phrased in the disjunctive, with the result that a jury could properly convict a defendant for "knowingly" but without evil intent making a "false" but not a "fraudulent" statement. *Hirsch v. INS*, 308 F.2d 562 (9th Cir. 1962). The indictment must clearly show the charge involves only the fraud aspect of the statute. If the charge is in the disjunctive all doubts are resolved in favor of the alien. Matter of B- M-, supra. See *Kabongo v. INS*, 837 F.2d 753 (6th Cir. 1988) false statement on application for student loan - alien admitted fraud.

18. 18 U.S.C. 1029(a)(2) - Fraud and related activity in connection with access devices, i.e. any card, plate, code, account number, or any other means to obtain money, goods, services, or any other thing of value is a CIMT.

19. 18 U.S.C. 1071 - Harboring a Fugitive from Justice. The active and knowing interference with the enforcement of the laws of the United States is a CIMT. Matter of Sloan, 12 I. & N. Dec. 840 (BIA 1966; A.G. 1968).

20. 18 U.S.C. 1341 - Mail Fraud is a CIMT. Matter of Sanchez, 17 I. & N. Dec. 218 (BIA 1980). See *U.S. v. Jaeger*, 563 F. Supp. 285 (S.D.N.Y. 1983). This case also included a conviction under 18 U.S.C. Section 1342. See also *Humboldt Oil Co. Inc. v. Exxon*, 532 F. Supp. 896 (D. Nev. 1982); *Abel Oviawe v. INS*, 853 F.2d 1428 (7th Cir. 1988); and *Izedonmwen v. INS*, 37 F.3d. 416 (8th Cir 1994).

21. 18 U.S.C. 1342 - Fictitious name and address in violation of Postal law is a CIMT. Matter of Adetiba, Int. Dec. 3177 (BIA 1992); *U.S. v. Jaeger*, 563 F. Supp. 285 (S.D. N.Y. 1983).

22. 18 U.S.C. 1426(b) - Uttering and Selling False or Counterfeit Paper Relating to Registry of Aliens in Violation of 18 U.S.C. Section 1426(b). Entails a deliberate deception and impairment of Governmental functions; thus, it is inherently fraudulent and is a CIMT. Matter of Flores, 17 I. & N. Dec. 225 (BIA 1980).

23. 18 U.S.C. 1503 - Influencing or Injuring an Officer, Juror or Witness is a CIMT. *Knoetze v. United States Dept. of State*, 634 F.2d 207 at 211 (5th Cir. 1981), cert. denied, 454 U.S. 823 (1981). See also *Inducing a Witness to Render False Testimony*, *U.S. v. Friedland*, 502 F. Supp. 611 (D.N.J. 1980).

24. 18 U.S.C. 1542 - Willfully and Knowingly Making False Statements in an Application for a Passport is a CIMT. Fraud and materiality are essential elements of the crime. Matter of B-, 7 I. & N. Dec. 342 (BIA 1956). Matter of Correa - Garces, Int. Dec. 3169.



\*25. 18 U.S.C. 1546 - Use of a U.S. Passport with Intent to Defraud. Matter of H- and Y-, 3 I. & N. Dec. 236 (C.O. 1948). Making false statements under oath in an alien's application for permanent residence in violation of 18 U.S.C. Section 1546 is a CIMT. Calvo-Ahumada v. Rinaldi, 435 F.2d 544 (3d Cir. 1970).

\*Possession of an altered immigration document with knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a conviction for a CIMT. Matter of Serna, 20 I. & N. Dec. 579 (BIA 1992).

26. 18 U.S.C. 1621 - Perjury is a CIMT. U.S. ex rel. Flores v. Savoretti, 205 F.2d 544 (5th Cir. 1953).

27. 18 U.S.C. 1708, 1702 - Stealing Mail from Letter Boxes is a CIMT. Matter of B-, 3 I. & N. Dec. 270 (BIA 1948). See also Matter of F-, 7 I. & N. Dec. 386 (BIA 1957), "larcenous."

28. 18 U.S.C. 1951 - Conspiracy to Interfere with Trade and Commerce by Violence, Threats, and Coercion (Anti-Racketeering Act) is a CIMT. U.S. ex rel. Circella v. Neely, 115 F. Supp. 615 (D.C. Ill. 1953), reh'g denied sub nom. U.S. ex rel Circella v. Sahli, 216 F.2d 33 (7th Cir. 1954), cert. denied, 348 U.S. 964 (1955).

29. 18 U.S.C. 1952 – "Interstate Travel in Aid of Racketeering Enterprise" is a CIMT. Smalley v. Ashcroft, 354 F.3d 332 (2003). The court concluded that moral turpitude inheres in this crime because the alien had the intent to conceal or disguise the source of illegal drug money when he committed the offense.

29. 18 U.S.C. 1954 - Taking Kickbacks (corrupt intent implied). Court found it is a CIMT. U.S. v. Friedland, 502 F. Supp. 611 at 619 (D.N.J. 1980).

30. 18 U.S.C. 2312 - Transporting Autos. U.S. v. Castro, 26 F.3d 557 (5th Cir. 1994). Transporting stolen autos requires guilty knowledge and is a CIMT.

31. 18 U.S.C. 2313. Receiving Stolen Autos. U.S. v. Castro, 26 F.3d 557 (5th Cir. 1994), held it is a CIMT as the crime requires guilty knowledge.

32. 20 U.S.C. 1097(a) - Receiving Funds by False Statement, alien conceded this crime involved moral turpitude. Kabongo v. INS, 837 F.2d 753 (6th Cir. 1988). See also Izedonmwen v. INS 37 F.3d 416 (8th Cir. 1994).

33. 21 U.S.C. 174 - Trafficking in Narcotic Drugs is a CIMT. "While it is no doubt true that there may be technical, inadvertent and insignificant violations of the laws relating to narcotics which do not involve moral turpitude, there can be nothing more depraved or morally indefensible than conscious participation in the illicit drug traffic." U.S. ex rel. De Luca v. O'Rourke, 213 F.2d 759 (8th Cir. 1954). Note: INS usually would charge under 8 U.S.C. Section 1251(a)(11).

34. 21 U.S.C. 841 - Distribution of Cocaine is a CIMT. In re Khourn, Int. Dec. 3330.
35. 26 U.S.C. 7206(1) - Knowingly Failed to Report Income is a CIMT. U.S. v. Friedland, 502 F. Supp. 611 (D.N.J. 1980).
36. 29 U.S.C. 186(b)(1) - Union Official Unlawfully Accepts Loan. Found to be a CIMT. International, E.T.C. v. Waterfront Com'n. E.T.C., 642 F.2d 666 at 671 (2d Cir. 1981).
37. 41 U.S.C. 51 & 54 - Receipt of kickbacks on government contracts is a CIMT. Matter of Alarcon, Int. Dec. 3184 (BIA July 13, 1992).
38. 42 U.S.C. 408 - Falsely representing a social security number assigned by the Secretary of the U.S. Department of Health and Human Services. Matter of Adetiba, Int. Dec. 3177 (BIA 1992).
39. 50 U.S.C. 311 - Violation of Selective Training and Service Act of 1940. False statements as to citizenship for the purpose of evading military service is a CIMT. Matter of H-, 6 I. & N. Dec. 619 (BIA 1955; C.O. 1955; A.G. 1955). See also submission of a false affidavit as to non-liability for service. Matter of R-, 5 I. & N. Dec. 29 (BIA 1952; A.G. 1953).
40. Bribery is a CIMT - An attempt to influence a person in authority has always been considered wrong as an act against justice and governing authority. Matter of R-, 1 I. & N. Dec. 118 (BIA 1941); Ng Sui Wing v. U.S., 46 F.2d 755 (7th Cir. 1931). Attempt to bribe under Section 333, German Criminal Code. Matter of V-, 4 I. & N. Dec. 100 (BIA 1950).
41. Willful False Statements to Obtain Unemployment Benefits - Section 101(a) of the California Unemployment Insurance Act. People v. Armstrong, 100 Cal. 2d 852, 224 P.2d 490 (1950), ruled that the essential elements of the offense defined in Section 101(a) are an intent to defraud and the utilization of the false statement for the purpose of perpetrating the fraud and obtaining money benefits. A violation of 101(a) is a CIMT. Matter of L-, 5 I. & N. Dec. 705 (BIA 1954).
42. Tax Evasion (State Law) - Wittgenstein v. INS, 124 F.3d 1244 (10th Cir. 1997).

The crime involves New Mexico state law and is found to have fraud as an essential element. This crime is a CIMT.

**CRIMES AGAINST AUTHORITY OF GOVERNMENT NOT INVOLVING MORAL TURPITUDE**

1. 8 U.S.C. 1324 - Alien smuggling is not a CIMT. U.S. V. Gloria, 494 F.2d 477 (5th Cir. 1974), cert. denied, 419 U.S. 995 (1974). Matter of Tiwari, 19 I. & N. Dec. 875 (BIA 1989). Dicta in IN RE L-S ID 3386 (BIA April 16, 1999)
2. 8 U.S.C. 1326 - Re-entering or Attempting to Re-enter the United States After Deportation. Rodriguez v. Campbell, 8 F.2d 983 (5th Cir. 1925).
3. 18 U.S.C. 336 - Mailing a Letter Concerning a Lottery. States v. Carrollo, 30 F. Supp. 3 (D.C. 1939). Also, mailing an obscene letter in violation of the same statute was not a CIMT.
4. 18 U.S.C. 474 - Possession of Counterfeit Securities is not a CIMT. Held the statute did not require knowledge that the securities were counterfeit. Matter of Lethbridge, 11 I. & N. Dec. 444 (BIA 1965).
- \*5. 18 U.S.C. 1546 - Use of a U.S. Passport with Intent to Defraud. Possession of an altered immigration document with knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a conviction for a CIMT. Matter of Serna, I.D. 3188 (BIA 10/14/92).
- \*Matter of H- and Y-, 3 I. & N. Dec. 236 (C.O. 1948). Making false statements under oath in an alien's application for permanent residence in violation of 18 U.S.C. Section 1546 is a CIMT. Calvo-Ahumada v. Rinaldi, 435 F.2d 544 (3d Cir. 1970).
6. 26 U.S.C. 1397(a)(1) - Carrying on the Business of a Retail Liquor Dealer Without Having Paid the Special Tax Required by 26 U.S.C. Section 1397(a)(1) was not a CIMT. Matter of Hopkins, 1 I. & N. Dec. 394 (BIA 1943).
7. 26 U.S.C. 5861(d), 5871 - Possession of unregistered sawed-off shotgun. Matter of Granados, 16 I. & N. Dec. 726 (BIA 1979).
8. 31 U.S.C. 5324(3) - Structuring any transaction with one or more domestic financial institutions for the purpose of evading the reporting requirements of the financial institution(s) in violation of 31 U.S.C. Sec. 5324(a)(3) (1988) Goldeshtein v. INS, 8 F.3d 645 (9th Cir. 1993); the 9th Cir. held the crime is not a CIMT. Matter of L-V-C, 22 I. & N. Dec. 594 (BIA 1999)
9. Escape from Prison or Attempted Escape - Escape from Prison or Attempted Escape is not a CIMT. Matter of B-, 5 I. & N. Dec. 538 (BIA 1953); Matter of J-, 4 I. & N. Dec. 512 (BIA 1951).
10. Failing to Prevent the Commission of a Crime - (Mexican Law) Matter of S- C-, 3 I. & N. Dec. 350 (C.O. 1948; BIA 1949).
11. Gambling Offenses - Matter of S-, 9 I. & N. Dec. 688 (BIA 1962); Matter of Gaglioti, 10 I. & N. Dec. 719 (BIA 1964).

12. Failure to Report for Induction - Matter of S-, 5 I. & N. Dec. 425 (BIA 1953).
13. Desertion from Armed Forces - Matter of S- B-, 4 I. & N. Dec. 682 (BIA 1952).
14. Contempt of Court - Matter of P, 6 I. & N. Dec. 400 (BIA 1954).
15. Contempt of Congress - Matter of C-, 9 I. & N. Dec. 524 (BIA 1962).