



BIA and Circuit Court Case Law Chart: Assault-Related CIMTs

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I. Using This Chart

This chart provides a summary of BIA and circuit court case law regarding the crime involving moral turpitude (CIMT) analysis for assault-related offenses. The purpose of this chart is to provide practitioners and advocates with a more thorough context for the state of the law together with reference points for analogizing to assault statutes that have not yet been evaluated by the courts. Practitioners should note that state legislatures often amend criminal laws. Accordingly, it is important to always confirm whether the offense/elements analyzed by the BIA or the circuit court in a given opinion are the same as the elements at issue in a client's statute of conviction. The chart *only* reflects the elements discussed within the cited decisions and *does not* reflect any changes that may have occurred within those statutes since the decisions were issued. Furthermore, the chart includes some limited unpublished case law in an effort to provide further insight into how courts might think about a particular kind of assault offense. Unpublished case law is neither precedential nor binding in immigration matters.

This resource is intended to assist lawyers and fully accredited representatives and does not constitute legal advice. It is neither a substitute for independent analysis of the law applicable in the practitioner's jurisdiction nor for independent assessment of the immigration consequences of a particular client's criminal history. Attorneys and fully accredited representatives should perform their own research to ascertain whether the state of the law has changed since publication of this chart.

The chart is organized first by jurisdiction (part I) and then by theme (part II). Where a particular case corresponds to more than one theme, it may be included twice in that part. Ultimately, however, both parts contain the same overall case references.

II. The Categorical and Modified Categorical Approaches

Federal and BIA case law have established that the categorical approach is the proper legal framework for determining whether criminal convictions qualify as CIMTs.² Under the categorical approach, a court must compare the elements of the generic offense (as relevant here, and as discussed below, an assault-related CIMT) with the elements of the statute of conviction.³ If the elements articulated in the statute of conviction are the same as or narrower than the elements of the generic offense, there is a categorical match, and the inquiry ends.⁴ If,

² See, e.g., *Safaryan v. Barr*, 975 F.3d 976, 985 (9th Cir. 2020); *Matter of Wu*, 27 I&N Dec. 8, 10 (BIA 2017).

³ *Descamps v. United States*, 570 U.S. 254, 261 (2013).

⁴ *Id.*

however, the statute of conviction’s elements proscribe conduct that is broader than the elements of the generic offense, then there is no categorical match, and the court will consider whether the modified categorical approach applies.⁵

The applicability of the modified categorical approach depends on whether or not the statute of conviction is “divisible,” i.e. whether it “comprises multiple, alternative versions of the crime.”⁶ For example, some statutes may be divisible between different articulated mental states, meaning that the jury must find beyond a reasonable doubt that a particular mental state applies.⁷ For other statutes, however, the articulated mental states may merely reflect “illustrative examples”—means by which a defendant may commit an offense but which need not be charged or agreed upon by a jury to reach a guilty verdict.⁸ Where a statute’s listed alternatives are simply sample means of committing the offense, it is not divisible and only the categorical approach applies.⁹ If, however, the statute articulates alternative elements, then it is divisible and the modified categorical approach must be used to consult a “limited class of documents,” such as the indictment or the jury instructions, to identify which set of elements are at issue for a given conviction.¹⁰

It is important to keep these approaches in mind when reviewing case law, as they often inform the specific parameters of a court’s holding. For example, some decisions may conclude that a statute is overbroad for a CIMT finding but never reach the issue of whether or not the statute is divisible. In such circumstances, there is an outstanding possibility that some convictions under that statute could still be CIMTs.¹¹ Or, by contrast, some cases may apply the modified categorical approach and ultimately conclude that the specific elements applicable to a respondent’s conviction are or are not a CIMT. The question may still remain, however, whether another set of elements under that same statute would constitute a CIMT.¹²

⁵ *Id.*

⁶ *Id.* at 262.

⁷ See *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016).

⁸ *Id.* at 2256.

⁹ See, e.g., *Gomez-Perez v. Lynch*, 829 F.3d 323 (5th Cir. 2016) (concluding that Texas’ section 22.01(a)(1) is not divisible between its articulated mental states of intentionally, knowingly, or recklessly).

¹⁰ *Descamps*, 570 U.S. at 257. See, e.g., *Garcia v. Holder*, 584 F.3d 1288 (10th Cir. 2009) (indicating that Colorado’s third-degree assault statute is divisible between the mental states “knowingly” and “recklessly” but finding that the record of conviction was inconclusive regarding which mental state applied to respondent’s conviction).

¹¹ See, e.g., *Morales-Garcia v. Holder*, 567 F.3d 1058 (9th Cir. 2009) (concluding that California’s section 273.5(a) (corporal injury to a spouse etc.) is not categorically a CIMT but remanding for consideration of the modified categorical approach).

¹² See, e.g., *Larios v. Attorney Gen. United States*, 978 F.3d 62 (3d Cir. 2020) (limiting its CIMT discussion regarding New Jersey’s section 2C:12-3(a) (terroristic threats) to the specific elements of the respondent’s guilty plea).

In certain cases, the chart below *may* note where these outstanding inquiries exist. But such notes do not serve as substitute for an independent evaluation of whether the elements of a particular client’s conviction do or do not fall within the parameters of the case law referenced.

III. The Generic Definition of an Assault-Related CIMT

CIMT is a term of art used in immigration matters and has no congressionally-provided definition.¹³ Over time, however, courts have indicated that a CIMT generally requires “two essential elements: reprehensible conduct and a culpable mental state.”¹⁴

Beyond that articulation of the term, courts have also developed more specific legal frameworks to analyze distinct CIMT categories such as fraud offenses, theft offenses, sex-crimes, lewd conduct, and so on. Assault-related crimes have emerged as one such category that requires its own set of considerations or own generic definition for conducting a CIMT analysis. Specifically, courts have concluded that both the applicable state of mind and the level of harm contemplated are relevant to a determination of whether moral turpitude inheres in a particular assault-related statute.¹⁵

When weighing those considerations, case law has made clear that “simple assault or battery that only requires offensive touching or threatened offensive touching of another committed with general intent that does not result in serious bodily harm” will not be considered a CIMT.¹⁶ Additionally, for assault offenses that require criminal negligence, moral turpitude will generally not attach, even if the statute contemplates a higher level of harm.¹⁷

However, courts have indicated that where an assault statute requires both a specific intent and a resulting physical injury, it will likely be considered morally turpitudinous.¹⁸ And for statutes that fall in between this spectrum, case law has considered the presence or absence of

¹³ See, e.g., *Jean-Louis v. Attorney Gen. of U.S.*, 582 F.3d 462, 477 (3d Cir. 2009).

¹⁴ *Matter of J-G-P-*, 27 I&N Dec. 642, 644 (BIA 2019).

¹⁵ See, e.g., *Matter of Solon*, 24 I&N Dec. 239, 241–42 (BIA 2007).

¹⁶ *Matter of Wu*, 27 I&N Dec. at 10–11.

¹⁷ See *Matter of Perez-Contreras*, 20 I&N Dec. 615, 618–19 (BIA 1992).

¹⁸ *Matter of Solon*, 24 I&N Dec. at 243–44.

aggravating factors—such as the use of a dangerous weapon, the inclusion of a particularly vulnerable victim, or a more serious level of harm—as relevant to the CIMT inquiry.¹⁹

Likely a CIMT

Specific intent + physical injury (but note how different jurisdictions define terms like “injury” or “harm,” as mere offensive touching is generally insufficient).

Potentially a CIMT

Offenses with a mens rea greater than negligence but less than specific intent + an aggravating factor such as: use of a dangerous weapon, a particularly vulnerable victim, or a more serious level of harm.

Likely not a CIMT

Offenses that require only criminal negligence.

Many statutes do not, however, fall cleanly within these articulated parameters. The case law referenced below, therefore, is intended to give greater form to the distinctions between turpitudinous and non-turpitudinous statutes and reflects the innumerable ways in which states can define assault offenses with different combinations of intent (including different definitions of those intents), harm, and aggravating factors.

¹⁹ See, e.g., *Matter of Sanudo*, 23 I&N Dec. 968, 971–72 (BIA 2006).

IV. Key takeaways from assault-related CIMT case law

(1) Reckless offenses remain risky for immigrant defendants but will not always qualify as CIMTs.

As case law regarding assault-related offenses continues to develop, it has become clear that statutes which articulate a reckless state of mind come closest to straddling the CIMT line, with courts identifying reckless crimes that are and are not morally turpitudinous.²⁰ The most common category of reckless offenses to be deemed CIMTs across different jurisdictions are those that (1) define recklessness as a conscious disregard of a known/substantial risk which constitutes a gross deviation from the standards of a reasonable person, and that (2) require a resulting harm of serious bodily injury²¹ or higher.²² However, even with the emergence of such a trend, advocates should still consider arguments that can be set forth regarding why a reckless offense may not constitute a CIMT, including:

- (a) The harm contemplated in a given reckless offense rises only to the level of bodily injury or offensive touching and therefore is not sufficiently serious.²³ This argument may also be available for bodily injury statutes that articulate both an intentional mens rea and a reckless mens rea and are not divisible.²⁴
- (b) The definition of recklessness in a given jurisdiction is less culpable than the conscious disregard + gross deviation standard articulated above.²⁵

²⁰ Compare *Matter of Fualaau*, 21 I&N Dec. 475 (BIA 1996) (concluding that Hawaii's section 707-712 (reckless assault in the third degree) is not a CIMT) with *Baptiste v. Attorney Gen.*, 841 F.3d 601 (3d Cir. 2016) (determining that New Jersey's 2C:12-1b(1) (second-degree reckless aggravated assault) is a CIMT).

²¹ Practitioners should note that every jurisdiction will have its own definition of terms such as "serious bodily injury" and "bodily injury." Accordingly, it is important to always compare such definitions to the ones referenced in any relevant case law.

²² See, e.g., *Estrada-Rodriguez v. Lynch*, 825 F.3d 397 (8th Cir. 2016); *Godinez-Arroyo v. Mukasey*, 540 F.3d 848 (8th Cir. 2008); *Keungne v. U.S. Atty. Gen.*, 561 F.3d 1281 (11th Cir. 2009); *Gayle v. Sessions*, 719 F. App'x 68 (2d Cir. 2018).

²³ See, e.g., *Matter of Fualaau*, 21 I&N Dec. 475 (BIA 1996).

²⁴ See, e.g., *Gomez-Perez v. Lynch*, 829 F.3d 323 (5th Cir. 2016).

²⁵ See, e.g., *Coelho v. Sessions*, 864 F.3d 56 (1st Cir. 2017) (remanding for consideration of whether Massachusetts' unique recklessness definition is sufficient to trigger a CIMT finding); *Larios v. Attorney Gen. United States*, 978 F.3d 62 (3d Cir. 2020) (concluding that New Jersey's "terroristic threats" statute is not a CIMT because it lacks aggravating factors and may be based on a definition of recklessness that includes "heedless[ness]," "foolhardi[ness]," or "scorn for the consequences"). But see *Baptiste v. Attorney Gen.*, 841 F.3d 601 (3d Cir. 2016) (concluding that New Jersey's definition of recklessness is sufficient to support a CIMT finding for second-degree aggravated assault (section 2C:12-1b(1)) when the statute also requires an "extreme indifference to the value of human life" and resulting serious bodily injury).

- (c) Where a statute contemplates that the defendant's conduct "may" trigger a certain kind of harm, moral turpitude does not inhere.²⁶
- (d) An attempted reckless offense does not constitute a CIMT because one cannot attempt (which requires specific intent) to commit a reckless crime, and therefore no mens rea is discernible in such offenses.²⁷

(2) *A state's definition of injury or harm is essential to the CIMT inquiry.*

Whenever reviewing a client's assault-related statute of conviction, it is important to evaluate the applicable definition of harm. While certain terms such as "battery" may sound alarming, they do not, by definition, always contemplate actual physical injury.

For example, in *Matter of Sejas*, the BIA concluded that Virginia's family assault and battery statute (section 18.2-57.2) was not a CIMT even though it included an intent to cause injury.²⁸ Essential to the Board's decision there was the fact that Virginia's definition of injury may constitute a mere offensive touching or "may be to the feelings or mind, as well as to the corporeal person."²⁹ Similarly, in *Matter of Sanudo*, the Board reviewed California's domestic battery statutes (sections 242/243(e)(1)) and determined that the minimum conduct required was a mere "touching" without consent, even though the statute's elements reference the "use of force or violence."³⁰ Accordingly, when confronted with a statute of conviction with harm or injury elements, advocates should always cross-reference to the specific definition of those terms and, where applicable, set forth arguments that the extent of harm contemplated is insufficient to trigger a CIMT finding.

(3) *The presence of a deadly weapon element is concerning but may not always be dispositive.*

The use of a dangerous or deadly weapon has emerged as one of the most common aggravating factors that may convert an assault-related offense into a CIMT. Indeed, of the eight cases reviewed below that included statutes with a deadly weapon element, seven of those statutes were deemed CIMTs. Accordingly, convictions for this kind of offense can be very risky for undocumented defendants.

²⁶ See, e.g., *Mahn v. Attorney Gen. of U.S.*, 767 F.3d 170 (3d Cir. 2014) (concluding that Pennsylvania's section 2705 (reckless endangerment) is not a CIMT where the minimum culpable conduct includes acts that may place another in danger of serious bodily injury). But see *Idy v. Holder*, 674 F.3d 111 (1st Cir. 2012) (concluding that New Hampshire's section 631:3 (reckless conduct), which includes the element of "places or may place another in danger," is a CIMT without discussing the potential impact of the "may" language).

²⁷ See, e.g., *Gill v. I.N.S.*, 420 F.3d 82 (2d Cir. 2005); *Knapik v. Ashcroft*, 384 F.3d 84 (3d Cir. 2004).

²⁸ *Matter of Sejas*, 24 I&N Dec. 236, 238 (BIA 2007).

²⁹ *Id.*

³⁰ *Matter of Sanudo*, 23 I&N Dec. at 969.

Still, in at least one case, a circuit court concluded that an intent to place the victim in apprehension of an immediate battery (versus an intent to injure) was insufficient to trigger a CIMT finding even when the statute included a dangerous weapon element.³¹ Accordingly, practitioners should continue to argue that courts must consider all aspects of a given statute in the CIMT analysis—including the applicable intent—even when use of a dangerous weapon might be at play.

(4) A vulnerable victim element is not, in and of itself, sufficient to trigger a CIMT finding.

Although the assault-related CIMT case law has established that a vulnerable victim may be considered an aggravating factor, the existence of such an element must still be analyzed within the statute’s broader context. Indeed, courts have held that certain assault-related statutes referencing vulnerable victims such as a child,³² a domestic partner,³³ and a police officer³⁴ are not morally turpitudinous without the requisite mens rea and/or level of harm.

Like dangerous weapons statutes, therefore, advocates should never assume that the presence of a vulnerable victim will be sufficient for a CIMT finding and should, instead, conduct a more comprehensive evaluation of the interaction between a statute’s full set of elements.

³¹ *Hernandez v. Whitaker*, 914 F.3d 430 (6th Cir. 2019).

³² See *Jean-Louis v. Attorney Gen. of U.S.*, 582 F.3d 462 (3d Cir. 2009) (concluding that Pennsylvania’s section 2701(b)(2) (simple assault on a child under 12) is not a CIMT where the least culpable conduct would be a reckless assault by a person over 20 years of age who does not know that the victim is under 12 years old).

³³ See, e.g., *Matter of Sanudo*, 23 I&N Dec. 968 (BIA 2006) (determining that a California domestic battery conviction under sections 242/243(e)(1) does not constitute a CIMT, even with the domestic relationship element, because the minimum conduct consists of a nonconsensual “touching”); *Matter of Sejas*, 24 I&N Dec. 236 (BIA 2007) (holding that Virginia’s 18.2-57.2 (assault and battery against a family or household member) is not categorically a CIMT).

³⁴ See *Partyka v. Attorney Gen. of U.S.*, 417 F.3d 408 (3d Cir. 2005) (concluding that respondent’s conviction under New Jersey’s section 2C:12-1(b)(5)(a) (aggravated assault in the third degree) was not a CIMT, even though the victim was a police officer, because the minimum culpable conduct included the negligent infliction of bodily injury).

Part I: Cases by Jurisdiction

Case	Statute	Elements	CIMT?	Legal Reasoning
Board of Immigration Appeals				
<i>Matter of Aguilar-Mendez</i> , 28 I&N Dec. 262 (BIA 2021).	California’s § 245(a)(4) (assault by means of force likely to produce great bodily injury) ³⁵	(1) Commits an assault upon the person of another, (2) by means of force likely to produce great bodily injury.	Yes	The Board noted that it had considered a previous version of the same statute (former section 245(a)(1)) in <i>Matter of Wu</i> and had concluded there that assault by means of force likely to produce great bodily injury includes an intentional act plus an aggravating factor and thus “necessarily” falls within the definition of a CIMT. Accordingly, the reasoning from that decision is controlling and applies equally to the elements as now articulated at section 245(a)(4).
<i>Matter of J-G-P</i> , 27 I&N Dec. 642 (BIA 2019).	Oregon’s § 163.190 (menacing)	(1) Intentionally attempts to place	Yes	Section 163.190 is a CIMT because, in contrast

³⁵ This provision was previously encompassed under section 245(a)(1) (analyzed by the BIA in *Matter of Wu*) but was moved to its own subsection by the California Legislature in 2012.

		<p>another in fear of imminent serious physical injury,³⁶ (2) a reasonable person would have been placed in the state of fear, and (3) takes a substantial step towards achieving his/her objective.</p>		<p>to the general intent of a simple assault statute, it requires a “specific intent to create fear in the victim, as perceived by a reasonable person.” It also requires fear of imminent serious physical injury.³⁷ Actual inflicted fear is not necessary because the intent and level of threatened harm is serious and immediate and the reasonable person standard ensures that empty threats are not proscribed.</p>
<p><i>Matter of Wu</i>, 27 I&N Dec. 8 (BIA 2017).</p>	<p>California’s § 245(a)(1) (assault with a deadly weapon or likely to produce great bodily injury)</p>	<p>(1) Willfully, (2) commits an act that would directly and probably result in the application of force to another with either (a) a deadly weapon</p>	<p>Yes</p>	<p>Section 245(a)(1) is a CIMT because it requires that the defendant have knowledge of the facts that would make great bodily injury likely and also includes an aggravating factor of either a deadly weapon or force likely to</p>

³⁶ Section 161.015(8) defines “serious physical injury” as “physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.”

³⁷ Note that many other state menacing statutes only require fear of bodily injury and therefore may present distinguishing factors from *Matter of J-G-P*.

		or (b) force likely to produce great bodily injury, and (3) defendant was (a) aware of facts that would lead a reasonable person to understand that the act would result in an application of force and (b) had the present ability to apply such force.		produce great bodily injury. This combination—even absent the specific intent more commonly associated with turpitudinous conduct—is still sufficient for a CIMT finding.
<i>Matter of Solon</i> , 24 I&N Dec. 239 (BIA 2007). ³⁸	New York’s § 120.00(1) (third-degree assault)	(1) With intent to cause physical injury to another, (2) causes such injury to such person or a third person.	Yes	As relevant to section 120.00(1), physical injury is defined as “impairment of physical condition or substantial pain.” Such a definition—coupled with relevant state caselaw—reveal that the harm necessary is meaningfully greater than simple offensive touching. Thus,

³⁸ The second circuit has deferred to the Board’s analysis here in unpublished caselaw. See, e.g., *Guevara v. Holder*, 533 F. App’x 23 (2d Cir. 2013).

				section 120.00(1) is a CIMT because it requires that (1) the defendant act with a "conscious objective" to cause the physical injury and (2) such an injury actually results to the victim.
<i>Matter of Sejas</i> , 24 I&N Dec. 236 (BIA 2007).	Virginia's § 18.2-57.2 (assault and battery against a family or household member)	(1) Commits an assault and battery, (2) against a family or household member (including the person's spouse, whether or not he/she resides in the same home with the person).	No	Section 18.2-57.2 is NOT a CIMT because it "does not require the actual infliction of physical injury but may include any touching, however slight." Although it requires an intent to cause injury, the injury may be to the feelings or mind in addition to the corporeal person.
<i>Matter of Sanudo</i> , 23 I&N Dec. 968 (BIA 2006).	California's § 242/243(e)(1) (domestic battery)	(1) Any willful and unlawful use of force or violence, (2) upon the person of another, (3) committed against a spouse, a person with whom the defendant is	No	Respondent's conviction under section 242/243(e)(1) is NOT a CIMT because the minimum conduct necessary is the intentional "touching" of another without consent and no violence or intent to injure is required. Accordingly,

		cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship.		the conviction is more akin to simple battery, and the additional element of a current or former "domestic" relationship is not sufficient to establish moral turpitude.
<i>Matter of Fualaau</i> , 21 I&N Dec. 475 (BIA 1996).	Hawaii's § 707-712 (reckless assault in the third degree)	(1) Intentionally, knowingly, or recklessly causes, (2) bodily injury to another.	No	The record indicated that respondent was convicted based on a reckless state of mind (defined as consciously disregarding a substantial and unjustifiable risk), which was not coupled with the infliction of serious bodily injury. Accordingly, it is more analogous to simple assault, and the conviction was not a CIMT. ³⁹

³⁹ The Board did not reach the issue of whether section 707-712 is divisible regarding the three mental states.

<p><i>Matter of Perez-Contreras</i>, 20 I&N Dec. 615 (BIA 1992).</p>	<p>Washington’s § 9A.36.031(1)(f) (third-degree assault)</p>	<p>(1) With criminal negligence,⁴⁰ (2) causes bodily harm and substantial pain, (3) that extends for a period sufficient to cause considerable suffering.</p>	<p>No</p>	<p>Section 9A.36.031(1)(f) is NOT a CIMT because no specific intent or conscious disregard of a substantial and unjustifiable risk was required for conviction.</p>
<p><i>Matter of Danesh</i>, 19 I&N Dec. 669 (BIA 1988).</p>	<p>Texas’ § 22.02(a)(2)(A) (aggravated assault)</p>	<p>(1) Knowingly and intentionally, (2) causes bodily injury, (3) to a peace officer, (4) who was in the lawful discharge of his/her official duties, (5) knowing the person assaulted was a peace officer.</p>	<p>Yes</p>	<p>Respondent’s conviction is a CIMT because bodily injury is an essential element, indicating that “sufficient force must have been employed to cause harm to the victim’s person,” thereby distinguishing it from simple assault. Additionally, defendant must have had knowledge that the victim was a peace officer discharging his/her official duties.</p>

⁴⁰ Criminal negligence is defined under section 9A.08.010(1)(d) as failure “to be aware of a substantial risk that a wrongful act may occur and [] failure to be aware [that] such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation.”

<i>Matter of Medina</i> , 15 I&N Dec. 611 (BIA 1976).	Illinois' Chapter 38 § 12-2(a)(1) (aggravated assault)	(1) Intentionally, knowingly, or recklessly commits an assault and (2) uses a deadly weapon.	Yes	Section 12-2(a)(1) is a CIMT because all three possible mens rea elements (intent, knowledge, and recklessness) (where recklessness requires a conscious disregard of a substantial and unjustifiable risk, which is a gross deviation from the standard of care that would be exercised by a reasonable person) are sufficient to support a finding of moral turpitude when coupled with the use of a deadly weapon.
<i>Matter of O</i> , 3 I&N Dec. 193 (BIA 1948).	Connecticut's § 6195 (assault with a deadly weapon)	(1) Assault, (2) with a deadly or dangerous weapon.	Yes	Section 6195 is a CIMT because of the aggravating factor requiring use of a deadly or dangerous weapon.

Case	Statute	Elements	CIMT?	Holding
1st Circuit				
<i>Coelho v. Sessions</i> , 864 F.3d 56 (1st Cir. 2017).	Massachusetts' ch. 265 § 15A(b) (assault and	(1) Commits an assault and battery, (2) upon another, (3)	Remanded to the BIA	The BIA must consider the unique definition of recklessness in

	battery with a dangerous weapon "ABDW")	by means of a dangerous weapon. Can be committed either (1) with the intentional and unjustified use of force upon the person of another, however slight, or (2) as the intentional commission of a wanton or reckless act (something more than gross negligence) causing physical or bodily injury to another.		Massachusetts which, in contrast to the Model Penal Code, does not require a subjective awareness of the risk posed by the relevant conduct. Instead, the state must only establish that an ordinary person would have realized the danger, regardless of whether the defendant him or herself had any actual awareness. Accordingly, the BIA must elaborate on how such a mental state fits into its CIMT framework/precedent.
<i>Idy v. Holder</i> , 674 F.3d 111 (1st Cir. 2012).	New Hampshire's § 631:3 (reckless conduct)	(1) Recklessly engages in conduct, (2) which places or may place another in danger, (3) of serious bodily injury.	Yes	BIA's holding that section 631:3 is a CIMT was not contrary to the law because the statute contains both reprehensible conduct in the form of serious bodily injury and a sufficient degree of scienter in the form of a reckless mental

				state, which requires actual awareness and a conscious disregard for a substantial and unjustifiable risk and constitutes a gross deviation from the conduct of a law-abiding person.
2nd Circuit				
<i>Gayle v. Sessions</i> , 719 F. App'x 68 (2d Cir. 2018).	New York's § 120.20 (second-degree reckless endangerment)	(1) Recklessly engages in conduct, (2) which creates a substantial risk of serious physical injury to another person.	Yes	Section 120.20 is a CIMT because it requires a conscious disregard of a substantial and unjustifiable risk which constitutes a gross deviation from the standard of conduct for a reasonable person, coupled with serious physical injury defined as "physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the

				function of any bodily organ.”
<i>Gill v. I.N.S.</i> , 420 F.3d 82 (2d Cir. 2005).	New York’s § 120.05(4) (attempted second-degree assault)	(1) Attempts to, (2) recklessly cause, (3) serious physical injury to another, (4) by means of a deadly weapon or a dangerous instrument.	No	Attempted second-degree (reckless) assault is NOT a CIMT where no mental state can be discerned within such a conviction. This is true because attempt requires the specific intent to achieve a particular outcome, but the reckless crime here is defined by an unintended result (e.g., serious bodily injury).
3rd Circuit				
<i>Larios v. Attorney Gen. United States</i> , 978 F.3d 62 (3d Cir. 2020).	New Jersey’s § 2C:12-3(a) (terroristic threats)	(1) Threatens to commit any crime of violence, (2) with the purpose to terrorize another, or (3) in reckless disregard of the risk of causing such terror. ⁴¹	No, under subsection respondent pled to	The record of conviction demonstrated that the minimum conduct for respondent’s conviction included a reckless threat to commit a violent property crime, which included no aggravating factors and thus was NOT

⁴¹ The court initially determined that section 2C:12-3(a) is divisible regarding the different “purpose” elements articulated therein. The full statute reads: “A person is guilty of a crime of the third degree if he threatens to commit any crime of violence with the purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience.” After applying the modified categorical approach, the court concluded that Larios had been convicted under the elements of “threatening to commit

				a CIMT. New Jersey also defines recklessness as including “heedlessness” or “foolhardiness,” which is distinguishable from other definitions that include an extreme or depraved indifference to a person’s life.
<i>Javier v. Attorney Gen.</i> , 826 F.3d 127 (3d Cir. 2016).	Pennsylvania’s § 2706(a)(1) (terroristic threats)	(1) Communicates, either directly or indirectly, (2) a threat to commit any crime of violence, (3) with intent to terrorize another.	Yes	Section 2706(a)(1) is a CIMT because it requires a specific intent to terrorize, distinguishing it from simple assault.
<i>Baptiste v. Attorney Gen.</i> , 841 F.3d 601 (3d Cir. 2016).	New Jersey’s 2C:12-1b(1) (second-degree aggravated assault)	(1) Recklessly causes, (2) serious bodily injury to another, (3) under circumstances manifesting extreme indifference to the value of human life.	Yes	The court defined the statute as a “reckless crime with two aggravating factors.” Recklessness is defined in New Jersey as consciously disregard[ing] a substantial and unjustifiable risk...which involves a gross deviation

any crime of violence with the purpose to terrorize another...or in reckless disregard of the risk of causing such terror.” Accordingly, the court’s conclusions do not speak to a CIMT analysis for the other statutory subsections.

				from the standard of a reasonable person. The two aggravating factors include serious bodily injury and manifesting an extreme indifference to the value of human life. Accordingly, the conviction constitutes a CIMT.
<i>Salomon-Baixac v. Attorney Gen. of U.S.</i> , 558 F. App'x 160 (3d Cir. 2014).	New Jersey's 2C:12-1(a)(1) (third-degree aggravated assault)	(1) Attempts to cause or purposely, knowingly, or recklessly causes, (2) injury to another.	Yes	Respondent's conviction was a CIMT where— applying the modified categorical approach—the charging document indicated that he “purposely did attempt to cause bodily injury to and/or purposely, knowingly, or recklessly did cause bodily injury to [the victim].”
<i>Mahn v. Attorney Gen. of U.S.</i> , 767 F.3d 170 (3d Cir. 2014).	Pennsylvania's § 2705 (reckless endangerment)	(1) Recklessly engages in conduct, (2) which places or may place another, (3) in danger of death or serious bodily injury.	No	Section 2705 is NOT a CIMT because the minimum culpable conduct encompasses reckless acts that may place another in danger of serious bodily injury, and therefore includes

				conduct such as driving through a red light, which is not base, vile, or depraved.
<i>Jean-Louis v. Attorney Gen. of U.S.</i> , 582 F.3d 462 (3d Cir. 2009).	Pennsylvania's § 2701(b)(2) (simple assault on a child under 12).	(1) Attempts to cause or (2) intentionally, knowingly, or recklessly causes, (3) bodily injury, (4) against a child under 12 years of age by an adult 21 years or older.	No	Section 2701(b)(2) is NOT a CIMT where the statute does not specify a mens rea requirement regarding the age of the victim and therefore the least culpable conduct would be a reckless assault by a person over 20 years of age who does not know that the victim is under 12 years old. This might include an act such as recklessly hitting a car which the driver did not know had a minor passenger. Such conduct does not implicate moral turpitude.
<i>Solomon v. Attorney Gen. of U.S.</i> , 308 F. App'x 644 (3d Cir. 2009).	Delaware's § 621(a)(1) (terroristic threatening)	(1) Threatens to commit, (2) any crime likely to result in death or in serious injury to person or property.	Yes	BIA's holding that section 621(a)(1) is a CIMT was not in error because the statute requires not only the utterance of words threatening serious injury or death but the

				intentional transmission of that threat.
<i>Andres v. Attorney Gen. of U.S.</i> , 263 F. App'x 212 (3d Cir. 2008).	New Jersey's § 2C:12-1(b)(7) (aggravated assault)	(1) Attempts to cause, (2) significant bodily injury to another.	Yes	Respondent's conviction for 2C:12-1(b)(7) was a CIMT where an attempt to cause injury necessarily requires a specific intent to cause injury.
<i>Campbell v. Attorney Gen. of U.S.</i> , 174 F. App'x 89 (3d Cir. 2006).	New York's § 120.14 (second-degree menacing)	(1) Intentionally places or attempts to place another person, (2) in reasonable fear of physical injury, serious physical injury, or death, (3) by displaying a deadly weapon, dangerous instrument, or what appears to be a [firearm], or (1) repeatedly follows a person or engages in conduct over a period of time, which (2) intentionally places or attempts to	Yes	BIA's determination that section 120.14 is a CIMT was reasonable because it involves intentionally placing an individual in fear of physical injury.

		place another person, (3) in fear of physical injury, serious physical injury, or death.		
<i>Partyka v. Attorney Gen. of U.S.</i> , 417 F.3d 408 (3d Cir. 2005).	New Jersey's 2C:12-1(b)(5)(a) (aggravated assault in the third degree)	(1) Negligently causes, (2) bodily injury with a deadly weapon, (3) on an officer acting in the performance of his duties, (3) knowing the person to be a law enforcement officer, (4) resulting in bodily injury. ⁴²	No	Respondent's conviction was NOT a CIMT where the least culpable conduct included the negligent infliction of bodily injury, which is, by definition, an unintentional and unwitting act. The facts that the victim was a police officer and that the defendant caused bodily injury, do not change the result.
<i>Knapik v. Ashcroft</i> , 384 F.3d 84 (3d Cir. 2004).	New York's § 120.25 (attempted first-degree reckless endangerment)	(1) Attempts, (2) to recklessly engage in conduct, (3) under circumstances evincing a depraved indifference to human life, (4)	When coupled with attempt=no, otherwise=yes	The BIA's conclusion that section 120.25 is a CIMT was reasonable considering the combined elements of depravity, recklessness, and a grave risk of death. However, respondent's conviction for <i>attempted</i> reckless

⁴² The elements articulated here reflect the minimum conduct which the court reviewed and not the full set of conduct articulated in New Jersey's assault statute sections 2C:12-1a(1),(2), and (3).

		which creates a grave risk of death to another person.		endangerment is NOT a CIMT because attempt (requiring a specific intent) is inconsistent with recklessness (which implies acting without intent).
4th Circuit				
<i>Yousefi v. INS</i> , 260 F.3d 318 (4th Cir. 2001).	District of Columbia’s § 22-502 (assault with a dangerous weapon)	(1) Simple assault, (2) with a dangerous weapon (defined as one that is likely to produce death or serious bodily injury).	Yes	The BIA’s conclusion that section 22-502 is a CIMT was reasonable because there is no notable difference between assaulting someone with a deadly weapon (which has previously been deemed a CIMT) and a dangerous weapon (which is, at a minimum, likely to produce serious bodily injury).
5th Circuit				
<i>Gomez-Perez v. Lynch</i> , 829 F.3d 323 (5th Cir. 2016).	Texas’ § 22.01(a)(1) (misdemeanor assault)	(1) Intentionally, knowingly, or recklessly, (2) causes bodily injury to another person.	No	Section 22.01(a)(1) is NOT a CIMT because it is not divisible and can be committed by mere reckless conduct, which falls short of the requisite culpable mental state.

<p><i>Pichardo v. I.N.S.</i>, 104 F.3d 756 (5th Cir. 1997).</p>	<p>Pennsylvania's § 2702 (aggravated assault)</p>	<p>(1) Attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life;</p> <p>(2) attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to a police officer making or attempting to make a lawful arrest;</p> <p>(3) attempts to cause or intentionally or knowingly causes bodily injury to a police officer making or attempting to make a lawful arrest; or</p>	<p>Yes</p>	<p>Because the minimum conduct for the four categories of aggravated assault under section 2702 includes bodily injury together with a mens rea of recklessness, the "typical" elements for a finding of moral turpitude are present.</p>
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		(4) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon. ⁴³		
6th Circuit				
<i>Hernandez v. Whitaker</i> , 914 F.3d 430 (6th Cir. 2019).	Michigan’s § 750.82 (felonious assault)	(1) Assaults another person, (2) with a gun...or other dangerous weapon, (3) without intending to commit murder or to inflict great bodily harm less than murder.	No	Section 750.82 is NOT a CIMT because the statute is indivisible and the minimum culpable conduct includes an intent to “instill apprehension” rather than an intent to injure.
<i>Lovano v. Lynch</i> , 846 F.3d 815 (6th Cir. 2017).	Ohio’s § 2903.12(A)(1) (aggravated assault)	(1) Knowingly, (2) while under the influence of sudden passion or in a sudden fit of rage, which is (3) brought on by serious provocation	Yes	Section 2903.12(A)(1) is a CIMT because it requires the intentional infliction of serious bodily injury. The provocation language does not change the result because it is not an element of the crime that must be

⁴³ 18 PA. Const. Stat. section 2702 includes a number of subsections with different elements. In *Pichardo*, the court did not identify the subsection under which the respondent was convicted but rather, determined that the minimum conduct under all subsections (as of 1997) included “bodily injury together with a minimum mens rea of recklessness.”

		occasioned by the victim that is reasonably sufficient to incite the use of deadly force, (4) causes serious physical harm to another.		established by the prosecution. Rather, it merely serves to mitigate against a more serious assault charge.
7th Circuit				
<i>Garcia-Meza v. Mukasey</i> , 516 F.3d 535 (7th Cir. 2008).	Illinois' 720 ILCS 5/12-3(a)(1)-(2) & 5/12-4(b)(6) (aggravated battery of a police officer)	(1) Intentionally or knowingly causes bodily harm, or (2) makes physical contact of an insulting or provoking nature, (3) knowing the victim to be a peace officer engaged in official duties.	Remanded	BIA erred in concluding that Respondent's conviction for making physical contact of an insulting nature against a police officer is necessarily a CIMT but must consider on remand whether knowledge that the victim is a police officer, without any requirement of harm or violence, converts the battery into a CIMT.
8th Circuit				
<i>Estrada-Rodriguez v. Lynch</i> , 825 F.3d 397 (8th Cir. 2016).	Arkansas' § 5-13-205 (2004) (first-degree assault)	(1) Recklessly engages in, (2) conduct that creates a substantial risk of	Yes	Section 5-13-205 is a CIMT because the statute only applies to the conscious disregard of a substantial and

		death or serious physical injury to another person.		unjustifiable risk of death or serious physical injury to another person and requires that such disregard constitute a gross deviation from the standard of a reasonable person.
<i>Avendano v. Holder</i> , 770 F.3d 731 (8th Cir. 2014).	Minnesota’s § 609.713(1) (terroristic threats)	(1) Threatens, directly or indirectly, (2) to commit any crime of violence, (3) with reckless disregard of the risk of causing...terror.	Yes	The BIA permissibly concluded that the reckless mens rea (defined in Minnesota as “deliberate action in disregard of a known, substantial risk”) constituted sufficient scienter for a CIMT finding. ⁴⁴
<i>Godinez-Arroyo v. Mukasey</i> , 540 F.3d 848 (8th Cir. 2008).	Missouri’s § 565.060(3) (reckless second-degree assault)	(1) Recklessly causes, (2) serious physical injury to another.	Yes	The BIA’s determination that respondent’s conviction under section 565.060(3) constituted a CIMT was persuasive because the statute couples a reckless mens rea (defined in Missouri as

⁴⁴ In *Avendano*, the court left open the question of whether “making a bomb threat in a school or making a threat to kill out of ‘transitory anger’—with reckless disregard of the risk of causing terror—is not necessarily reprehensible conduct, and [] the Minnesota statute therefore reaches conduct that does not involve moral turpitude.” 770 F.3d at 736.

				“consciously disregard[ing] a substantial and unjustifiable risk...[which] constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation”) with an aggravating factor of serious injury.
<i>Chanmouny v. Ashcroft</i> , 376 F.3d 810 (8th Cir. 2004).	Minnesota’s § 609.713(1) (terroristic threats)	(1) Threatens, directly or indirectly, (2) to commit any crime of violence, (3) with purpose to terrorize another. ⁴⁵	Yes	Section 609.713(1) is a CIMT and distinguishable from simple assault where it requires a specific intent to cause extreme fear and thus includes “the requisite depravity.”
9th Circuit				
<i>Safaryan v. Barr</i> , 975 F.3d 976 (9th Cir. 2020).	California’s § 245(a)(1) (assault with a deadly weapon or likely to produce great bodily injury)	(1) Willfully, (2) commits an act that would directly and probably result in the application of force to another with either (a) a	Yes	The circuit court determined that <i>Matter of Wu</i> (concluding that section 245(a)(1) is a CIMT) was entitled to deference because the statute includes a

⁴⁵ Section 609.713(1) includes an alternative mens rea of “reckless disregard of the risk of causing such terror.” However, because the record of conviction indicated that respondent had been charged under the “purpose to terrorize” subsection, the court did not reach the question of whether the reckless disregard elements would constitute a CIMT. The court separately addressed the “reckless disregard” prong in *Avendano v. Holder*, 770 F.3d 731 (8th Cir. 2014).

		deadly weapon or (b) force likely to produce great bodily injury, and (3) defendant was (a) aware of facts that would lead a reasonable person to understand that the act would result in an application of force and (b) had the present ability to apply such force.		sufficiently culpable mens rea and involves the aggravating factors of either (a) use of a deadly weapon or (b) force likely to produce great bodily injury.
<i>Altayar v. Barr</i> , 947 F.3d 544 (9th Cir. 2020).	Arizona’s § 13-1203(A)(2)/§ 13-1204(A)(2) (aggravated assault with a deadly weapon)	(1) Intentionally places, (2) another person in reasonable apprehension, (3) of imminent physical injury, and (4) uses a deadly weapon or dangerous instrument.	Yes	Respondent’s conviction was a CIMT because it required (1) the aggravating element of using a deadly weapon or dangerous instrument, (2) the specific intent both to use the deadly weapon and to place another person in reasonable apprehension of imminent physical injury, and (3) “serious contemplated harm.”

<p><i>Fugow v. Barr</i>, 943 F.3d 456 (9th Cir. 2019).</p>	<p>Hawaii's § 707-721(1) (first-degree unlawful imprisonment)</p>	<p>(1) Knowingly, (2) restrains another person, (3) under circumstances which exposes the person to the risk, of (4) serious bodily injury.</p>	<p>Yes</p>	<p>Section 707-721(1) is a CIMT because it couples a "knowing" mens rea with a severe level of harm ("bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ").</p>
<p><i>Otto v. Barr</i>, 782 F. App'x 624 (9th Cir. 2019).</p>	<p>Hawaii's § 707-711(1)(d) (attempted second-degree assault)</p>	<p>(1) Intentionally or knowingly, (2) causes, (3) bodily injury (physical pain, illness, or any impairment of physical condition) to another, (4) with a dangerous instrument (any firearm...or other weapon...which in the manner it is used or intended to be used is known to be capable of producing death</p>	<p>Yes</p>	<p>The statute defines a CIMT because it includes a specific intent coupled with the use of a weapon capable of causing death or serious bodily injury.</p>

		or serious bodily injury).		
<i>Coquico v. Lynch</i> , 789 F.3d 1049 (9th Cir. 2015).	California’s § 417.26 (unlawful laser activity)	(1) Aims or points, (2) a laser scope as defined in subdivision (b) of Section 417.25, or a laser pointer, as defined in subdivision (c) of that section, (3) at a peace officer, (4) with the specific intent to cause apprehension or fear of bodily harm, (5) who knows or reasonably should know that the person...is a peace officer.	No	The IJ and BIA erred in concluding that section 417.26 is categorically a CIMT. Instead, the court determined that the statute is more analogous to simple assault insofar as it does not require that the victim experience any fear and only references bodily harm, rather than serious bodily harm or death. Accordingly, it is NOT morally turpitudinous.
<i>Mtoched v. Lynch</i> , 786 F.3d 1210 (9th Cir. 2015).	Commonwealth of the Northern Mariana Islands 6 N. Mar. I. Code § 1204(a) (assault with a dangerous weapon)	(1) Threatens to cause, attempts to cause, or purposely causes, (2) bodily injury to another, (3) with a	Yes, under “purposely causes” section.	Because respondent’s conviction required a specific/evil intent together with bodily injury, it was a CIMT.

		dangerous weapon.		
<i>Leal v. Holder</i> , 771 F.3d 1140 (9th Cir. 2014).	Arizona’s § 13-1201 (felony endangerment)	(1) Recklessly, (2) endangers another person, (3) with a substantial risk of imminent death. ⁴⁶	Yes	BIA’s conclusion that section 13-1201 is a CIMT was reasonable where the reckless mental state is coupled with a grave result—substantial, actual risk of imminent death to another person. The fact that “recklessness” can be based on voluntary intoxication does not change the outcome because such conduct must still constitute a gross deviation from the conduct of a reasonable person.
<i>Turijan v. Holder</i> , 744 F.3d 617 (9th Cir. 2014).	California’s §§ 236/237 (felony false imprisonment)	(1) Intentionally and unlawfully restrains, confines, or detains another person, compelling them to stay or go somewhere, (2) without consent,	No	Because the statute does not require an intent to injure someone, an actual injury, or a protected class of victims, it is NOT categorically a CIMT.

⁴⁶ The same statute may be classified as a misdemeanor if it creates a substantial risk of physical injury, rather than death. The court did, not, however, review that version of the offense.

		(3) through violence (the use of physical force to restrain beyond the force necessary to effect the restraint) or menace (the threat of harm either express or implied by word or act).		
<i>Latter-Singh v. Holder</i> , 668 F.3d 1156 (9th Cir. 2012).	California's § 422 (threats with the intent to terrorize)	(1) Willfully threatens to commit a crime that will result in death or great bodily injury, (2) specifically intends that the statement be received as a threat, (3) the threat conveys a gravity of purpose and immediate prospect of execution, (4) the threat causes sustained fear for the victim's own safety or safety of immediate family,	Yes	Section 422 is a CIMT because (1) the underlying conduct threatened (specific intent to cause death or great bodily injury) is in and of itself a CIMT, (2) causing sustained fear of immediate danger is distinct from mere angry utterances, and (3) the mens rea of intentionally instilling great fear of serious bodily injury or death constitutes a "vicious motive or mind."

		and (5) the victim's fear was reasonable under the circumstances.		
<i>Uppal v. Holder</i> , 605 F.3d 712 (9th Cir. 2010).	Canada's § 268 (aggravated assault)	(1) Wounds, maims, disfigures, or (2) endangers the life of another.	No	Section 268 is NOT a CIMT because it is a general intent crime akin to a simple assault statute and requires no aggravating element such as a special relationship or serious physical injury.
<i>Saavedra-Figueroa v. Holder</i> , 625 F.3d 621 (9th Cir. 2010).	California's § 236 (misdemeanor false imprisonment)	(1) The unlawful violation, (2) of the personal liberty of another.	No	Section 236 is a general intent crime (versus felony false imprisonment, which requires a specific intent to harm), and therefore is not a CIMT.
<i>Morales-Garcia v. Holder</i> , 567 F.3d 1058 (9th Cir. 2009).	California's §273.5(a) (corporal injury to a spouse etc.)	(1) Inflicts bodily injury, (2) willfully and unlawfully, (3) upon his/her [[former] spouse], [[former] cohabitant], [the [mother or father] of his/her child], (4) resulting in a traumatic condition.	Not categorically a CIMT	The court concluded that because the statute includes former cohabitant victims, the full range of conduct does not cover only particularly vulnerable victims and therefore is overly broad. However, the court remanded to the BIA for application of the

				modified categorical approach. ⁴⁷
<i>Fernandez-Ruiz v. Gonzales</i> , 468 F.3d 1159 (9th Cir. 2006).	Arizona’s § 13-1203(A)(1)/(A)(2) (misdemeanor assault)/ § 13-3601(A) (domestic violence)	(1) Recklessly causes, (2) any physical injury to another person, or (1) intentionally places another person, (2) in reasonable apprehension of imminent physical injury.	No	Respondent’s conviction was NOT a CIMT where the domestic assault statutes at issue do not require either (1) willful conduct or (2) bodily injury that is more than insubstantial.
		10th Circuit		
<i>Garcia v. Holder</i> , 584 F.3d 1288 (10th Cir. 2009).	Colorado’s § 18-3-204(1)(a) (third-degree assault)	(1) Knowingly or recklessly, (2) causes bodily injury to another person.	Divisible as to mens rea	Although the court did not explicitly address whether the statute is categorically a CIMT, it indicated that the applicable mens rea (knowingly versus recklessly) would be a “critical factor” in determining whether a conviction under that statute had resulted in a CIMT. ⁴⁸

⁴⁷ In several unpublished decisions since *Morales-Garcia*, the Ninth Circuit has affirmed that a section 273.5(a) conviction based on injury to a spouse is, in fact, a CIMT. See, e.g., *Heredia v. Sessions*, 720 F. App’x 376 (9th Cir. 2017).

⁴⁸ See also *Dzerekey v. Holder*, 562 F. App’x 659 (10th Cir. 2014) (“Although the court in *Garcia* did not explicitly say that the statute is divisible, the result is possible only if the court determined the statute covered some conduct that involved moral turpitude and other conduct that did not.”).

11th Circuit

<p><i>Pierre v. U.S. Attorney Gen.</i>, 879 F.3d 1241 (11th Cir. 2018).</p>	<p>Florida’s § 784.085 (battery of a child)</p>	<p>(1) Knowingly, (2) projects blood, seminal fluid, urine, or feces, (3) at a child.</p>	<p>Yes</p>	<p>Section 784.085 is a CIMT because it requires a specific intent coupled with a vulnerable victim and is inherently “base and vile.”</p>
<p><i>Cano v. U.S. Atty. Gen.</i>, 709 F.3d 1052 (11th Cir. 2013).</p>	<p>Florida’s § 843.01 (resisting an officer with violence)</p>	<p>(1) Knowingly and willfully, (2) resists, obstructs, or opposes any officer, (3) who is in the lawful execution of any duty, (4) by offering or doing violence to his/her person.</p>	<p>Yes</p>	<p>Section 843.01 is a CIMT where the statute requires intentional violence, including the use or threat of physical force against an officer.</p>
<p><i>Keungne v. U.S. Atty. Gen.</i>, 561 F.3d 1281 (11th Cir. 2009).</p>	<p>Georgia’s § 16-5-60(b) (criminal reckless conduct)</p>	<p>(1) Causes bodily harm or endangers the bodily safety of another, (2) by consciously disregarding, (3) a substantial and unjustifiable risk that his act or omission will cause harm or endanger</p>	<p>Yes</p>	<p>Section 16-5-60(b) is a CIMT because it requires that (1) the defendant consciously disregard a substantial and unjustifiable risk, (2) the disregard constitutes a gross deviation from the standards of a reasonable person, and (3) the defendant causes bodily</p>

		the safety of the other person, and (4) the disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.		harm or endangers the bodily safety of another person.
<i>Sosa-Martinez v. U.S. Atty. Gen.</i> , 420 F.3d 1338 (11th Cir. 2005).	Florida's § 784.045 (aggravated battery)	(1) In committing a battery, (2) intentionally or knowingly causes, (3) great bodily harm, permanent disability, or permanent disfigurement, or (4) uses a deadly weapon.	Yes	Section 784.045 is a CIMT because it requires that the defendant intentionally commit a simple battery—defined as intentionally touching or striking another person or intentionally causing bodily harm to another—and that he/she cause great bodily harm, permanent disability, or permanent disfigurement or use a deadly weapon.

Part II: Cases by Theme

Case	Statute	Elements	CIMT?	Holding
<i>Intentional Conduct</i>				
<i>Matter of Aguilar-Mendez</i> , 28 I&N Dec. 262 (BIA 2021).	California’s § 245(a)(4) (assault by means of force likely to produce great bodily injury) ⁴⁹	(1) Commits an assault upon the person of another, (2) by means of force likely to produce great bodily injury.	Yes	The Board noted that it had considered a previous version of the same statute (former section 245(a)(1)) in <i>Matter of Wu</i> and had concluded there that assault by means of force likely to produce great bodily injury includes an intentional act plus an aggravating factor and thus “necessarily” falls within the definition of a CIMT. Accordingly, the reasoning from that decision is controlling and applies equally to the elements as now articulated at section 245(a)(4).

⁴⁹ This provision was previously encompassed under section 245(a)(1) (analyzed by the BIA in *Matter of Wu*) but was moved to its own subsection by the California Legislature in 2012.

<p><i>Safaryan v. Barr</i>, 975 F.3d 976 (9th Cir. 2020).</p>	<p>California’s § 245(a)(1) (assault with a deadly weapon or likely to produce great bodily injury)</p>	<p>(1) Willfully, (2) commits an act that would directly and probably result in the application of force to another with either (a) a deadly weapon or (b) force likely to produce great bodily injury, and (3) defendant was (a) aware of facts that would lead a reasonable person to understand that the act would result in an application of force and (b) had the present ability to apply such force.</p>	<p>Yes</p>	<p>The circuit court determined that <i>Matter of Wu</i> (concluding that section 245(a)(1) is a CIMT) was entitled to deference because the statute includes a sufficiently culpable mens rea and involves the aggravating factors of either (a) use of a deadly weapon or (b) force likely to produce great bodily injury.</p>
<p><i>Matter of J-G-P</i>, 27 I&N Dec. 642 (BIA 2019).</p>	<p>Oregon’s § 163.190 (menacing)</p>	<p>(1) Intentionally attempts to place another in fear of imminent serious physical injury,⁵⁰ (2) a reasonable</p>	<p>Yes</p>	<p>Section 163.190 is a CIMT because, in contrast to the general intent of a simple assault statute, it requires a “specific intent to create</p>

⁵⁰ Section 161.015(8) defines “serious physical injury” as “physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.”

		<p>person would have been placed in the state of fear, and (3) takes a substantial step towards achieving his/her objective.</p>		<p>fear in the victim, as perceived by a reasonable person.” It also requires fear of imminent serious physical injury. Actual inflicted fear is not necessary because the intent and level of threatened harm is serious and immediate and the reasonable person standard ensures that empty threats are not proscribed.</p>
<p><i>Fugow v. Barr</i>, 943 F.3d 456 (9th Cir. 2019).</p>	<p>Hawaii’s § 707-721(1) (first-degree unlawful imprisonment)</p>	<p>(1) Knowingly, (2) restrains another person, (3) under circumstances which exposes the person to the risk, of (4) serious bodily injury.</p>	<p>Yes</p>	<p>Section 707-721(1) is a CIMT because it couples a “knowing” mens rea with a severe level of harm (“bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ”).</p>
<p><i>Otto v. Barr</i>, 782 F. App’x 624 (9th Cir. 2019).</p>	<p>Hawaii’s § 707-711(1)(d) (attempted second-degree assault)</p>	<p>(1) Intentionally or knowingly, (2) causes, (3) bodily</p>	<p>Yes</p>	<p>The statute defines a CIMT because it includes a specific intent coupled</p>

		injury (physical pain, illness, or any impairment of physical condition) to another, (4) with a dangerous instrument (any firearm...or other weapon...which in the manner it is used or intended to be used is known to be capable of producing death or serious bodily injury).		with the use of a weapon capable of causing death or serious bodily injury.
<i>Pierre v. U.S. Attorney Gen.</i> , 879 F.3d 1241 (11th Cir. 2018).	Florida's § 784.085 (battery of a child)	(1) Knowingly, (2) projects blood, seminal fluid, urine, or feces, (3) at a child.	Yes	Section 784.085 is a CIMT because it requires a specific intent coupled with a vulnerable victim and is inherently "base and vile."
<i>Matter of Wu</i> , 27 I&N Dec. 8 (BIA 2017).	California's § 245(a)(1) (assault with a deadly weapon or likely to produce great bodily injury)	(1) Willfully, (2) commits an act that would directly and probably result in the application of force to another with either (a) a deadly weapon or (b) force	Yes	Section 245(a)(1) is a CIMT because it requires that the defendant have knowledge of the facts that would make great bodily injury likely and also includes an aggravating factor of

		likely to produce great bodily injury, and (3) defendant was (a) aware of facts that would lead a reasonable person to understand that the act would result in an application of force and (b) had the present ability to apply such force.		either a deadly weapon or force likely to produce great bodily injury. This combination—even absent the specific intent more commonly associated with turpitudinous conduct—is still sufficient for a CIMT finding.
<i>Lovano v. Lynch</i> , 846 F.3d 815 (6th Cir. 2017).	Ohio’s § 2903.12(A)(1) (aggravated assault)	(1) Knowingly, (2) while under the influence of sudden passion or in a sudden fit of rage, which is (3) brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the use of deadly force, (4) causes serious physical harm to another.	Yes	Section 2903.12(A)(1) is a CIMT because it requires the intentional infliction of serious bodily injury. The provocation language does not change the result because it is not an element of the crime that must be established by the prosecution. Rather, it merely serves to mitigate against a more serious assault charge.

<i>Javier v. Attorney Gen.</i> , 826 F.3d 127 (3d Cir. 2016).	Pennsylvania’s § 2706(a)(1) (terroristic threats)	(1) Communicates, either directly or indirectly, (2) a threat to commit any crime of violence, (3) with intent to terrorize another.	Yes	Section 2706(a)(1) is a CIMT because it requires a specific intent to terrorize, distinguishing it from simple assault.
<i>Coquico v. Lynch</i> , 789 F.3d 1049 (9th Cir. 2015).	California’s § 417.26 (unlawful laser activity)	(1) Aims or points, (2) a laser scope as defined in subdivision (b) of Section 417.25, or a laser pointer, as defined in subdivision (c) of that section, (3) at a peace officer, (4) with the specific intent to cause apprehension or fear of bodily harm, (5) who knows or reasonably should know that the person...is a peace officer.	No	The IJ and BIA erred in concluding that section 417.26 is categorically a CIMT. Instead, the court determined that the statute is more analogous to simple assault insofar as it does not require that the victim experience any fear and only references bodily harm, rather than serious bodily harm or death. Accordingly, it is NOT morally turpitudinous.
<i>Mtoched v. Lynch</i> , 786 F.3d 1210 (9th Cir. 2015).	Commonwealth of the Northern Mariana Islands 6 N. Mar. I. Code § 1204(a) (assault	(1) Threatens to cause, attempts to cause, or purposely causes, (2) bodily injury to	Yes, under “purposely causes” section.	Because respondent’s conviction required a specific/evil intent

	with a dangerous weapon)	another, (3) with a dangerous weapon.		together with bodily injury, it was a CIMT.
<i>Salomon-Baixac v. Attorney Gen. of U.S.</i> , 558 F. App'x 160 (3d Cir. 2014).	New Jersey's 2C:12-1(a)(1) (third-degree aggravated assault)	(1) Attempts to cause or purposely, knowingly, or recklessly causes, (2) injury to another.	Yes	Respondent's conviction was a CIMT where— applying the modified categorical approach— the charging document indicated that he “purposely did attempt to cause bodily injury to and/or purposely, knowingly, or recklessly did cause bodily injury to [the victim].”
<i>Turijan v. Holder</i> , 744 F.3d 617 (9th Cir. 2014).	California's §§ 236/237 (felony false imprisonment)	(1) Intentionally and unlawfully restrains, confines, or detains another person, compelling them to stay or go somewhere, (2) without consent, (3) through violence (the use of physical force to restrain beyond the force necessary to effect the restraint) or menace (the threat of harm either	No	Because the statute does not require an intent to injure someone, an actual injury, or a protected class of victims, it is NOT categorically a CIMT.

		express or implied by word or act).		
<i>Uppal v. Holder</i> , 605 F.3d 712 (9th Cir. 2010).	Canada's § 268 (aggravated assault)	(1) Wounds, maims, disfigures, or (2) endangers the life of another.	No	Section 268 is NOT a CIMT because it is a general intent crime akin to a simple assault statute and requires no aggravating element such as a special relationship or serious physical injury.
<i>Saavedra-Figueroa v. Holder</i> , 625 F.3d 621 (9th Cir. 2010).	California's § 236 (misdemeanor false imprisonment)	(1) The unlawful violation, (2) of the personal liberty of another.	No	Section 236 is a general intent crime (versus felony false imprisonment, which requires a specific intent to harm), and therefore is not a CIMT.
<i>Andres v. Attorney Gen. of U.S.</i> , 263 F. App'x 212 (3d Cir. 2008).	New Jersey's § 2C:12-1(b)(7) (aggravated assault)	(1) Attempts to cause, (2) significant bodily injury to another.	Yes	Respondent's conviction for 2C:12-1(b)(7) was a CIMT where an attempt to cause injury necessarily requires a specific intent to cause injury.
<i>Matter of Solon</i> , 24 I&N Dec. 239 (BIA 2007).	New York's § 120.00(1) (third-degree assault)	(1) With intent to cause physical injury to another, (2) causes such injury to such	Yes	As relevant to section 120.00(1), physical injury is defined as "impairment of physical condition or substantial

		person or a third person.		pain.” Such a definition—coupled with relevant state caselaw—reveal that the harm necessary is meaningfully greater than simple offensive touching. Thus, section 120.00(1) is a CIMT because it requires that (1) the defendant act with a “conscious objective” to cause the physical injury and (2) such an injury actually results to the victim.
<i>Campbell v. Attorney Gen. of U.S.</i> , 174 F. App’x 89 (3d Cir. 2006).	New York’s § 120.14 (second-degree menacing)	(1) Intentionally places or attempts to place another person, (2) in reasonable fear of physical injury, serious physical injury, or death, (3) by displaying a deadly weapon, dangerous instrument, or what appears to be a [firearm]. or (1) repeatedly follows a	Yes	BIA’s determination that section 120.14 is a CIMT was reasonable because it involves intentionally placing an individual in fear of physical injury.

		<p>person or engages in conduct over a period of time, which (2) intentionally places or attempts to place another person, (3) in fear of physical injury, serious physical injury, or death.</p>		
<p><i>Sosa-Martinez v. U.S. Atty. Gen.</i>, 420 F.3d 1338 (11th Cir. 2005).</p>	<p>Florida’s § 784.045 (aggravated battery)</p>	<p>(1) In committing a battery, (2) intentionally or knowingly causes, (3) great bodily harm, permanent disability, or permanent disfigurement, or (4) uses a deadly weapon.</p>	<p>Yes</p>	<p>Section 784.045 is a CIMT because it requires that the defendant intentionally commit a simple battery—defined as intentionally touching or striking another person or intentionally causing bodily harm to another—and that he/she cause great bodily harm, permanent disability, or permanent disfigurement or use a deadly weapon.</p>

<p><i>Matter of Perez-Contreras</i>, 20 I&N Dec. 615 (BIA 1992).</p>	<p>Washington’s § 9A.36.031(1)(f) (third-degree assault)</p>	<p>(1) With criminal negligence,⁵¹ (2) causes bodily harm and substantial pain, (3) that extends for a period sufficient to cause considerable suffering.</p>	<p>No</p>	<p>Section 9A.36.031(1)(f) is NOT a CIMT because no specific intent or conscious disregard of a substantial and unjustifiable risk was required for conviction.</p>
<p>Recklessness</p>				
<p><i>Larios v. Attorney Gen. United States</i>, 978 F.3d 62 (3d Cir. 2020).</p>	<p>New Jersey’s § 2C:12-3(a) (terroristic threats)</p>	<p>(1) Threatens to commit any crime of violence, (2) with the purpose to terrorize another, or (3) in reckless disregard of the risk of causing such terror.⁵²</p>	<p>No, under subsection respondent pled to</p>	<p>The record of conviction demonstrated that the minimum conduct for respondent’s conviction included a reckless threat to commit a violent property crime, which included no aggravating factors and thus was not a CIMT. New Jersey also defines recklessness as including “heedlessness”</p>

⁵¹ Criminal negligence is defined under section 9A.08.010(1)(d) as failure “to be aware of a substantial risk that a wrongful act may occur and [] failure to be aware [that] such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation.”

⁵² The court initially determined that section 2C:12-3(a) is divisible regarding the different “purpose” elements articulated therein. The full statute reads: “A person is guilty of a crime of the third degree if he threatens to commit any crime of violence with the purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience.” After applying the modified categorical approach, the court concluded that Larios had been convicted under the elements of “threatening to commit any crime of violence with the purpose to terrorize another...or in reckless disregard of the risk of causing such terror.” Accordingly, the court’s conclusions do not speak to a CIMT analysis for the other statutory subsections.

				or "foolhardiness," which is distinguishable from other definitions that include an extreme or depraved indifference to a person's life.
<i>Gayle v. Sessions</i> , 719 F. App'x 68 (2d Cir. 2018).	New York's § 120.20 (second-degree reckless endangerment)	(1) Recklessly engages in conduct, (2) which creates a substantial risk of serious physical injury to another person.	Yes	Section 120.20 is a CIMT because it requires a conscious disregard of a substantial and unjustifiable risk which constitutes a gross deviation from the standard of conduct for a reasonable person, coupled with serious physical injury defined as "physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ."
<i>Coelho v. Sessions</i> , 864 F.3d 56 (1st Cir. 2017).	Massachusetts' ch. 265 §15A(b) (assault and	(1) Commits an assault and battery, (2)	Remanded to the BIA	The BIA must consider the unique definition of

	battery with a dangerous weapon "ABDW")	upon another, (3) by means of a dangerous weapon. Can be committed either (1) with the intentional and unjustified use of force upon the person of another, however slight, or (2) as the intentional commission of a wanton or reckless act (something more than gross negligence) causing physical or bodily injury to another.		recklessness in Massachusetts which, in contrast to the Model Penal Code, does not require a subjective awareness of the risk posed by the relevant conduct. Instead, the state must only establish that an ordinary person would have realized the danger, regardless of whether the defendant him or herself had any actual awareness. Accordingly, the BIA must elaborate on how such a mental state fits into its CIMT framework/precedent.
<i>Baptiste v. Attorney Gen.</i> , 841 F.3d 601 (3d Cir. 2016).	New Jersey's 2C:12-1b(1) (second-degree aggravated assault)	(1) Recklessly causes, (2) serious bodily injury to another, (3) under circumstances manifesting extreme indifference to the value of human life.	Yes	The court defined the statute as a "reckless crime with two aggravating factors." Recklessness is defined in New Jersey as consciously disregard[ing] a substantial and unjustifiable risk...which

				involves a gross deviation from the standard of a reasonable person. The two aggravating factors include serious bodily injury and manifesting an extreme indifference to the value of human life. Accordingly, the conviction constitutes a CIMT.
<i>Gomez-Perez v. Lynch</i> , 829 F.3d 323 (5th Cir. 2016).	Texas' § 22.01(a)(1) (misdemeanor assault)	(1) Intentionally, knowingly, or recklessly, (2) causes bodily injury to another person.	No	Section 22.01(a)(1) is NOT a CIMT because it is not divisible and can be committed by mere reckless conduct, which falls short of the requisite culpable mental state.
<i>Estrada-Rodriguez v. Lynch</i> , 825 F.3d 397 (8th Cir. 2016).	Arkansas' § 5-13-205 (2004) (first-degree assault)	(1) Recklessly engages in, (2) conduct that creates a substantial risk of death or serious physical injury to another person.	Yes	Section 5-13-205 is a CIMT because the statute only applies to the conscious disregard of a substantial and unjustifiable risk of death or serious physical injury to another person and requires that such disregard constitute a gross deviation from the

				standard of a reasonable person.
<i>Mahn v. Attorney Gen. of U.S.</i> , 767 F.3d 170 (3d Cir. 2014).	Pennsylvania’s § 2705 (reckless endangerment)	(1) Recklessly engages in conduct, (2) which places or may play another, (3) in danger of death or serious bodily injury.	No	Section 2705 is NOT a CIMT because the minimum culpable conduct encompasses reckless acts that may place another in danger of serious bodily injury, and therefore includes conduct such as driving through a red light, which is not base, vile, or depraved.
<i>Avendano v. Holder</i> , 770 F.3d 731 (8th Cir. 2014).	Minnesota’s § 609.713(1) (terroristic threats)	(1) Threatens, directly or indirectly, (2) to commit any crime of violence, (3) with reckless disregard of the risk of causing...terror.	Yes	The BIA permissibly concluded that the reckless mens rea (defined in Minnesota as “deliberate action in disregard of a known, substantial risk”) constituted sufficient scienter for a CIMT finding. ⁵³
<i>Leal v. Holder</i> , 771 F.3d 1140 (9th Cir. 2014).	Arizona’s § 13-1201 (felony endangerment)	(1) Recklessly, (2) endangers another	Yes	BIA’s conclusion that section 13-1201 is a

⁵³ In *Avendano*, the court left open the question of whether “making a bomb threat in a school or making a threat to kill out of ‘transitory anger’—with reckless disregard of the risk of causing terror—is not necessarily reprehensible conduct, and [] the Minnesota statute therefore reaches conduct that does not involve moral turpitude.” 770 F.3d at 736.

		person, (3) with a substantial risk of imminent death. ⁵⁴		CIMT was reasonable where the reckless mental state is coupled with a grave result—substantial, actual risk of imminent death to another person. The fact that “recklessness” can be based on voluntary intoxication does not change the outcome because such conduct must still constitute a gross deviation from the conduct of a reasonable person.
<i>Idy v. Holder</i> , 674 F.3d 111 (1st Cir. 2012).	New Hampshire’s § 631:3 (reckless conduct)	(1) Recklessly engages in conduct, (2) which places or may place another in danger, (3) of serious bodily injury.	Yes	BIA’s holding that section 631:3 is a CIMT was not contrary to the law because the statute contains both reprehensible conduct in the form of serious bodily injury and a sufficient degree of scienter in the form of a reckless mental state, which requires

⁵⁴ The same statute may be classified as a misdemeanor if it creates a substantial risk of physical injury, rather than death. The court did, not, however, review that version of the offense.

				actual awareness and a conscious disregard for a substantial and unjustifiable risk and constitutes a gross deviation from the conduct of a law-abiding person.
<i>Jean-Louis v. Attorney Gen. of U.S.</i> , 582 F.3d 462 (3d Cir. 2009).	Pennsylvania's § 2701(b)(2) (simple assault on a child under 12).	(1) Attempts to cause or (2) intentionally, knowingly, or recklessly causes, (3) bodily injury, (4) against a child under 12 years of age by an adult 21 years or older.	No	Section 2701(b)(2) is NOT a CIMT where the statute does not specify a mens rea requirement regarding the age of the victim and therefore the least culpable conduct would be a reckless assault by a person over 20 years of age who does not know that the victim is under 12 years old. This might include an act such as recklessly hitting a car which the driver did not know had a minor passenger. Such conduct does not implicate moral turpitude.
<i>Keungne v. U.S. Atty. Gen.</i> , 561 F.3d 1281 (11th Cir. 2009).	Georgia's § 16-5-60(b) (criminal reckless conduct)	(1) Causes bodily harm or endangers the bodily safety of	Yes	Section 16-5-60(b) is a CIMT because it requires that (1) the defendant

		another, (2) by consciously disregarding, (3) a substantial and unjustifiable risk that his act or omission will cause harm or endanger the safety of the other person, and (4) the disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.		consciously disregard a substantial and unjustifiable risk, (2) the disregard constitutes a gross deviation from the standards of a reasonable person, and (3) the defendant causes bodily harm or endangers the bodily safety of another person.
<i>Godinez-Arroyo v. Mukasey</i> , 540 F.3d 848 (8th Cir. 2008).	Missouri's § 565.060(3) (reckless second-degree assault)	(1) Recklessly causes, (2) serious physical injury to another.	Yes	The BIA's determination that respondent's conviction under section 565.060(3) constituted a CIMT was persuasive because the statute couples a reckless mens rea (defined in Missouri as "consciously disregard[ing] a substantial and unjustifiable risk...[which] constitutes a gross

				deviation from the standard of care which a reasonable person would exercise in the situation”) with an aggravating factor of serious injury.
<i>Gill v. I.N.S.</i> , 420 F.3d 82 (2d Cir. 2005).	New York’s § 120.05(4) (attempted second-degree assault)	(1) Attempts to, (2) recklessly cause, (3) serious physical injury to another, (4) by means of a deadly weapon or a dangerous instrument.	No	Attempted second-degree (reckless) assault is NOT a CIMT where no mental state can be discerned within such a conviction. This is true because attempt requires the specific intent to achieve a particular outcome, but the reckless crime here is defined by an unintended result (e.g., serious bodily injury).
<i>Knapik v. Ashcroft</i> , 384 F.3d 84 (3d Cir. 2004).	New York’s § 120.25 (attempted first-degree reckless endangerment)	(1) Attempts, (2) to recklessly engage in conduct, (3) under circumstances evincing a depraved indifference to human life, (4) which creates a	When coupled with attempt=no, otherwise=yes	The BIA’s conclusion that section 120.25 is a CIMT was reasonable considering the combined elements of depravity, recklessness, and a grave risk of death. However, respondent’s conviction

		grave risk of death to another person.		for <i>attempted</i> reckless endangerment is not a CIMT because attempt (requiring a specific intent) is inconsistent with recklessness (which implies acting without intent).
<i>Matter of Fualaau</i> , 21 I&N Dec. 475 (BIA 1996).	Hawaii's § 707-712 (reckless assault in the third degree)	(1) Intentionally, knowingly, or recklessly causes, (2) bodily injury to another.	No	The record indicated that respondent was convicted based on a reckless state of mind (defined as consciously disregarding a substantial and unjustifiable risk), which was not coupled with the infliction of serious bodily injury. Accordingly, it is more analogous to simple assault, and the conviction was not a CIMT. ⁵⁵
Deadly/Dangerous Weapon				
<i>Safaryan v. Barr</i> , 975 F.3d 976 (9th Cir. 2020).	California's § 245(a)(1) (assault with a deadly weapon or likely to	(1) Willfully, (2) commits an act that would directly and probably result in	Yes	The circuit court determined that <i>Matter of Wu</i> (concluding that section 245(a)(1) is a

⁵⁵ The Board did not reach the issue of whether section 707-712 is divisible regarding the three mental states.

	produce great bodily injury)	the application of force to another with either (a) a deadly weapon or (b) force likely to produce great bodily injury, and (3) defendant was (a) aware of facts that would lead a reasonable person to understand that the act would result in an application of force and (b) had the present ability to apply such force.		CIMT) was entitled to deference because the statute includes a sufficiently culpable mens rea and involves the aggravating factors of either (a) use of a deadly weapon or (b) force likely to produce great bodily injury.
<i>Altayar v. Barr</i> , 947 F.3d 544 (9th Cir. 2020).	Arizona’s § 13-1203(A)(2)/§ 13-1204(A)(2) (aggravated assault with a deadly weapon)	(1) Intentionally places, (2) another person in reasonable apprehension, (3) of imminent physical injury, and (4) uses a deadly weapon or dangerous instrument.	Yes	Respondent’s conviction was a CIMT because it required (1) the aggravating element of using a deadly weapon or dangerous instrument, (2) the specific intent both to use the deadly weapon and to place another person in reasonable apprehension of imminent physical injury,

				and (3) "serious contemplated harm."
<i>Hernandez v. Whitaker</i> , 914 F.3d 430 (6th Cir. 2019).	Michigan's § 750.82 (felonious assault)	(1) Assaults another person, (2) with a gun...or other dangerous weapon, (3) without intending to commit murder or to inflict great bodily harm less than murder.	No	Section 750.82 is NOT a CIMT because the statute is indivisible and the minimum culpable conduct includes an intent to "instill apprehension" rather than an intent to injure.
<i>Matter of Wu</i> , 27 I&N Dec. 8 (BIA 2017).	California's § 245(a)(1) (assault with a deadly weapon or likely to produce great bodily injury)	(1) Willfully, (2) commits an act that would directly and probably result in the application of force to another with either (a) a deadly weapon or (b) force likely to produce great bodily injury, and (3) defendant was (a) aware of facts that would lead a reasonable person to understand that the act would result in an application of force and (b) had	Yes	Section 245(a)(1) is a CIMT because it requires that the defendant have knowledge of the facts that would make great bodily injury likely and also includes an aggravating factor of either a deadly weapon or force likely to produce great bodily injury. This combination—even absent the specific intent more commonly associated with turpitudinous conduct—is still sufficient for a CIMT finding.

		the present ability to apply such force.		
<i>Sosa-Martinez v. U.S. Atty. Gen.</i> , 420 F.3d 1338 (11th Cir. 2005).	Florida’s § 784.045 (aggravated battery)	(1) In committing a battery, (2) intentionally or knowingly causes, (3) great bodily harm, permanent disability, or permanent disfigurement, or (4) uses a deadly weapon.	Yes	Section 784.045 is a CIMT because it requires that the defendant intentionally commit a simple battery—defined as intentionally touching or striking another person or intentionally causing bodily harm to another—and that he/she cause great bodily harm, permanent disability, or permanent disfigurement or use a deadly weapon.
<i>Yousefi v. INS</i> , 260 F.3d 318 (4th Cir. 2001).	District of Columbia’s § 22-502 (assault with a dangerous weapon)	(1) Simple assault, (2) with a dangerous weapon (defined as one that is likely to produce death or serious bodily injury).	Yes	The BIA’s conclusion that section 22-502 is a CIMT was reasonable because there is no notable difference between assaulting someone with a deadly weapon (which has previously been deemed a CIMT) and a dangerous weapon (which is, at a minimum,

				likely to produce serious bodily injury).
<i>Pichardo v. I.N.S.</i> , 104 F.3d 756 (5th Cir. 1997).	Pennsylvania's § 2702 (aggravated assault)	(1) Attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life; (2) attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to a police officer making or attempting to make a lawful arrest; (3) attempts to cause or intentionally or knowingly causes bodily injury to a police officer making or attempting to make	Yes	Because the minimum conduct for the four categories of aggravated assault under section 2702 includes bodily injury together with a mens rea of recklessness, the "typical" elements for a finding of moral turpitude are present.

		a lawful arrest; or (4) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon. ⁵⁶		
<i>Matter of Medina</i> , 15 I&N Dec. 611 (BIA 1976).	Illinois' Chapter 38 § 12-2(a)(1) (aggravated assault)	(1) Intentionally, knowingly, or recklessly commits an assault and (2) uses a deadly weapon.	Yes	Section 12-2(a)(1) is a CIMT because all three possible mens rea elements (intent, knowledge, and recklessness) (where recklessness requires a conscious disregard of a substantial and unjustifiable risk, which is a gross deviation from the standard of care that would be exercised by a reasonable person) are sufficient to support a finding of moral turpitude when coupled with the use of a deadly weapon.

⁵⁶ 18 PA. Const. Stat. section 2702 includes a number of subsections with different elements. In *Pichardo*, the court did not identify the subsection under which the respondent was convicted but rather, determined that the minimum conduct under all subsections (as of 1997) included "bodily injury together with a minimum mens rea of recklessness."

<i>Matter of O</i> , 3 I&N Dec. 193 (BIA 1948).	Connecticut’s § 6195 (assault with a deadly weapon)	(1) Assault, (2) with a deadly or dangerous weapon.	Yes	Section 6195 is a CIMT because of the aggravating factor requiring use of a deadly or dangerous weapon.
Threats				
<i>Hernandez v. Whitaker</i> , 914 F.3d 430 (6th Cir. 2019).	Michigan’s § 750.82 (felonious assault)	(1) Assaults another person, (2) with a gun...or other dangerous weapon, (3) without intending to commit murder or to inflict great bodily harm less than murder.	No	Section 750.82 is NOT a CIMT because the statute is indivisible and the minimum culpable conduct includes an intent to “instill apprehension” rather than an intent to injure.
<i>Latter-Singh v. Holder</i> , 668 F.3d 1156 (9th Cir. 2012).	California’s § 422 (threats with the intent to terrorize)	(1) Willfully threatens to commit a crime that will result in death or great bodily injury, (2) specifically intends that the statement be received as a threat, (3) the threat conveys a gravity of purpose and immediate prospect of execution, (4)	Yes	Section 422 is a CIMT because (1) the underlying conduct threatened (specific intent to cause death or great bodily injury) is in and of itself a CIMT, (2) causing sustained fear of immediate danger is distinct from mere angry utterances, and (3) the mens rea of intentionally instilling great fear of

		the threat causes sustained fear for the victim's own safety or safety of immediate family, and (5) the victim's fear was reasonable under the circumstances.		serious bodily injury or death constitutes a "vicious motive or mind."
<i>Solomon v. Attorney Gen. of U.S.</i> , 308 F. App'x 644 (3d Cir. 2009).	Delaware's § 621(a)(1) (terroristic threatening)	(1) Threatens to commit, (2) any crime likely to result in death or in serious injury to person or property.	Yes	BIA's holding that section 621(a)(1) is a CIMT was not in error because the statute requires not only the utterance of words threatening serious injury or death but the intentional transmission of that threat.
<i>Chanmouny v. Ashcroft</i> , 376 F.3d 810 (8th Cir. 2004).	Minnesota's § 609.713(1) (terroristic threats)	(1) Threatens, directly or indirectly, (2) to commit any crime of violence, (3) with purpose to terrorize another. ⁵⁷	Yes	Section 609.713(1) is a CIMT and distinguishable from simple assault where it requires a specific intent to cause extreme fear and thus includes "the requisite depravity."

⁵⁷ Section 609.713(1) includes an alternative mens rea of "reckless disregard of the risk of causing such terror." However, because the record of conviction indicated that respondent had been charged under the "purpose to terrorize" subsection, the court did not reach the question of whether the reckless disregard elements would constitute a CIMT. The court separately addressed the "reckless disregard" prong in *Avendano v. Holder*, 770 F.3d 731 (8th Cir. 2014).

Domestic Partners

<p><i>Morales-Garcia v. Holder</i>, 567 F.3d 1058 (9th Cir. 2009).</p>	<p>California’s §273.5(a) (corporal injury to a spouse etc.)</p>	<p>(1) Inflicts bodily injury, (2) willfully and unlawfully, (3) upon his/her [[former] spouse], [[former] cohabitant], [the [mother or father] of his/her child], (4) resulting in a traumatic condition.</p>	<p>Not categorically a CIMT</p>	<p>The court concluded that because the statute includes former cohabitant victims, the full range of conduct does not cover only particularly vulnerable victims and therefore is overly broad. However, the court remanded to the BIA for application of the modified categorical approach.⁵⁸</p>
<p><i>Matter of Sejas</i>, 24 I&N Dec. 236 (BIA 2007).</p>	<p>Virginia’s § 18.2-57.2 (assault and battery against a family or household member)</p>	<p>(1) Commits an assault and battery, (2) against a family or household member (including the person’s spouse, whether or not he/she resides in the same home with the person).</p>	<p>No</p>	<p>Section 18.2-57.2 is NOT a CIMT because it “does not require the actual infliction of physical injury but may include any touching, however slight.” Although it requires an intent to cause injury, the injury may be to the feelings or mind in addition to the corporeal person.</p>

⁵⁸ In several unpublished decisions since *Morales-Garcia*, the Ninth Circuit has affirmed that a section 273.5(a) conviction based on injury to a spouse is, in fact, a CIMT. See, e.g., *Heredia v. Sessions*, 720 F. App’x 376 (9th Cir. 2017).

<p><i>Matter of Sanudo</i>, 23 I&N Dec. 968 (BIA 2006).</p>	<p>California’s § 242/243(e)(1) (domestic battery)</p>	<p>(1) Any willful and unlawful use of force or violence, (2) upon the person of another, (3) committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship.</p>	<p>No</p>	<p>Respondent’s conviction under section 242/243(e)(1) is NOT a CIMT because the minimum conduct necessary is the intentional “touching” of another without consent and no violence or intent to injure is required. Accordingly, the conviction is more akin to simple battery, and the additional element of a current or former “domestic” relationship is not sufficient to establish moral turpitude.</p>
<p><i>Fernandez-Ruiz v. Gonzales</i>, 468 F.3d 1159 (9th Cir. 2006).</p>	<p>Arizona’s § 13-1203(A)(1)/(A)(2) (misdemeanor assault)/ § 13-3601(A) (domestic violence)</p>	<p>(1) Recklessly causes, (2) any physical injury to another person, or (1) intentionally places another person, (2) in reasonable</p>	<p>No</p>	<p>Respondent’s conviction was NOT a CIMT where the domestic assault statutes at issue do not require either (1) willful conduct or (2) bodily</p>

		apprehension of imminent physical injury.		injury that is more than insubstantial.
Police Officers				
<i>Cano v. U.S. Atty. Gen.</i> , 709 F.3d 1052 (11th Cir. 2013).	Florida's § 843.01 (resisting an officer with violence)	(1) Knowingly and willfully, (2) resists, obstructs, or opposes any officer, (3) who is in the lawful execution of any duty, (4) by offering or doing violence to his/her person.	Yes	Section 843.01 is a CIMT where the statute requires intentional violence, including the use or threat of physical force against an officer.
<i>Garcia-Meza v. Mukasey</i> , 516 F.3d 535 (7th Cir. 2008).	Illinois' 720 ILCS 5/12-3(a)(1)-(2) & 5/12-4(b)(6) (aggravated battery of a police officer)	(1) Intentionally or knowingly causes bodily harm, or (2) makes physical contact of an insulting or provoking nature, (3) knowing the victim to be a peace officer engaged in official duties.	Remanded	BIA erred in concluding that Respondent's conviction for making physical contact of an insulting nature against a police officer is necessarily a CIMT but must consider on remand whether knowledge that the victim is a police officer, without any requirement of harm or violence, converts the battery into a CIMT.

<p><i>Partyka v. Attorney Gen. of U.S.</i>, 417 F.3d 408 (3d Cir. 2005).</p>	<p>New Jersey's 2C:12-1(b)(5)(a) (aggravated assault in the third degree)</p>	<p>(1) Negligently causes, (2) bodily injury with a deadly weapon, (3) on an officer acting in the performance of his duties, (3) knowing the person to be a law enforcement officer, (4) resulting in bodily injury.⁵⁹</p>	<p>No</p>	<p>Respondent's conviction was NOT a CIMT where the least culpable conduct included the negligent infliction of bodily injury, which is, by definition, an unintentional and unwitting act. The facts that the victim was a police officer and that the defendant caused bodily injury, do not change the result.</p>
<p><i>Pichardo v. I.N.S.</i>, 104 F.3d 756 (5th Cir. 1997).</p>	<p>Pennsylvania's § 2702 (aggravated assault)</p>	<p>(1) Attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life; (2) attempts to</p>	<p>Yes</p>	<p>Because the minimum conduct for the four categories of aggravated assault under section 2702 includes bodily injury together with a mens rea of recklessness, the "typical" elements for a finding of moral turpitude are present.</p>

⁵⁹ The elements articulated here reflect the minimum conduct which the court reviewed and not the full set of conduct articulated in New Jersey's assault statute sections 2C:12-1a(1),(2), and (3).

		<p>cause or intentionally, knowingly or recklessly causes serious bodily injury to a police officer making or attempting to make a lawful arrest; (3) attempts to cause or intentionally or knowingly causes bodily injury to a police officer making or attempting to make a lawful arrest; or (4) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon.⁶⁰</p>		
<p><i>Matter of Danesh</i>, 19 I&N Dec. 669 (BIA 1988).</p>	<p>Texas' § 22.02(a)(2)(A) (aggravated assault)</p>	<p>(1) Knowingly and intentionally, (2)</p>	<p>Yes</p>	<p>Respondent's conviction is a CIMT because</p>

⁶⁰ 18 PA. Const. Stat. section 2702 includes a number of subsections with different elements. In *Pichardo*, the court did not identify the subsection under which the respondent was convicted but rather, determined that the minimum conduct under all subsections (as of 1997) included "bodily injury together with a minimum mens rea of recklessness."

		causes bodily injury, (3) to a peace officer, (4) who was in the lawful discharge of his/her official duties, (5) knowing the person assaulted was a peace officer.		bodily injury is an essential element, indicating that "sufficient force must have been employed to cause harm to the victim's person," thereby distinguishing it from simple assault. Additionally, defendant must have had knowledge that the victim was a peace officer discharging his/her official duties.
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