

risk of imminent death statute is a CIMT, even where recklessness includes unawareness of risk due to voluntary intoxication); *Matter of Medina*, 15 I. & N. Dec. 611, 614 (B.I.A. 1976) (recklessness may be sufficient mens rea for a CIMT)].

a) Perjury, false statement or other alleged fraud offenses

- Perjury is not a CIMT if the statute does not include all the elements of common law perjury. *Rosales Rivera v. Lynch*, 816 F.3d 1064 (9th Cir. 2016) (ruling that California written perjury statute is not a CIMT because it did not include the same elements as common law perjury; specifically, it did not require an intent to defraud); *Matter of H-*, 1 I. & N. Dec. 669 (B.I.A. 1943) (holding offense not a CIMT if it does not require materiality of falsehood). [But see *Matter of Alvarado*, 26 I. & N. Dec. 895 (B.I.A. 2016) (holding that California written perjury statute is a CIMT because it does not substantially diverge from the common law definition)].
- Federal misprision of a felony, or other accessory after the fact offense, is not a CIMT if it does not necessarily involve the requisite intent or depraved conduct. See *Mendez v. Barr*, 960 F.3d 80 (2d Cir. 2020) (stating that intent to defraud must be explicitly written into statute as an element and cannot be implied as inherent; most crimes involve some dishonest or deceitful behavior, and Congress intended to create a small subclass of crimes with the CIMT designation); *Robles-Urrea v. Holder*, 678 F.3d 702 (9th Cir. 2012) (holding misprision, or unlawful concealment, of a felony is not categorically a CIMT because does not require specific intent, only knowledge, but statute may be divisible); *Navarro-Lopez v. Gonzales*, 503 F.3d 1063 (9th Cir. 2007) (en banc) (ruling California conviction for accessory after the fact was not a CIMT because does not require sufficient depravity to be a CIMT); *Matter of Rivens*, 25 I. & N. Dec. 623 (B.I.A. 2011) (holding accessory after the fact not categorically a CIMT because it covers conduct that is not sufficiently depraved to be a CIMT); *Matter of Espinoza-Gonzales*, 22 I. & N. Dec. 889, 896 (B.I.A. 1999) (stating, before BIA's later decisions in *Matter of Robles-Urrea* and *Matter of Mendez*, that misprision of a felony “lacks the critical element of an affirmative and intentional attempt, motivated by a specific intent, to interfere with the process of justice”). [But see *Villegas-Sarabia v. Sessions*, 874 F.3d 871, 877-81 (5th Cir. 2017) (misprision of a felony is categorically a CIMT because it requires an intentional act of deceit); *Padilla v. Gonzales*, 397 F.3d 1016 (7th Cir. 2005) (holding Illinois obstruction of justice statute is a CIMT even though it lacked the element of fraud, because making false statements and concealing criminal activity is sufficiently depraved to constitute a CIMT, and dishonesty or lying tend to involve moral turpitude); *Smalley v. Ashcroft*, 354 F.3d 332 (5th Cir. 2003) (finding that the affirmative act of concealing felony requires deceit and is thus a CIMT, and fraud is not necessary to make it a CIMT); *Itani v. Ashcroft*, 298 F.3d 1213 (11th Cir. 2002) (finding that misprision of a felony is a CIMT because it necessarily involves an affirmative act of concealment or participation in a felony); *Cabral v. I.N.S.*, 15 F.3d 193 (1st Cir. 1994) (granting deference to BIA's decision that a Massachusetts conviction for being an accessory after the fact to murder is a CIMT)]. The Board has twice held that misprision is categorically a CIMT, *Matter of Mendez*, 27 I. & N. Dec. 219 (B.I.A. 2018) (misprision is categorically a CIMT, because the affirmative act of concealing a known felony is deceitful and dishonest); *Matter of Robles-Urrea*, 24 I. & N. Dec. 22 (B.I.A. 2006) (if the underlying felony is a CIMT then misprision of that felony is also a CIMT), but both times they have been overruled, first by the Ninth Circuit in *Robles-Urrea v. Holder*, and then in the Second Circuit by *Mendez v. Barr*.

- Offense involving false statements to government officials is not a CIMT if the statute does not require intent to defraud or actual obstruction of justice. *Bobadilla v. Holder*, 679 F.3d 1052 (8th Cir. 2012) (holding Minnesota statute prohibiting providing a false name to a peace officer is not categorically a CIMT, because no requirement that intent to obstruct justice actually resulted in obstruction of justice); *Blanco v. Mukasey*, 518 F.3d 714, 718–20 (9th Cir. 2008) (holding that California false identification to a peace officer statute is not categorically a CIMT because it only requires knowing mens rea, not specific intent to defraud); *Notash v. Gonzales*, 427 F.3d 693 (9th Cir. 2005) (holding that attempted entry of goods into US by means of false statement is not a CIMT because it did not require evil intent or intent to defraud); *Hirsch v. I.N.S.*, 308 F.2d 562 (9th Cir. 1962) (holding that conviction for making false but not necessarily fraudulent statement to government agent not a CIMT because it does not require evil intent); *Matter of Tiwari*, 19 I. & N. Dec. 875 (B.I.A. 1989) (smuggling noncitizens is not a CIMT as the offense does not necessarily involve fraud or an evil intent); *Matter of Di Filippo*, 10 I. & N. Dec. 76 (B.I.A. 1962) (making false statements to an unemployment agency is not a CIMT because the statute did not require specific intent to mislead, only knowledge that the statement was false); *Matter of S-*, 2 I. & N. Dec. 353 (B.I.A., A. G. 1945) (finding knowingly making false statements, not amounting to perjury, on an immigration registration application is not a CIMT). [But see *Jordan v. De George*, 341 U.S. 223 (1951) (conspiring to evade liquor taxes is a CIMT because it requires intent to defraud); *Adame-Hernandez v. Barr*, 929 F.3d 1020 (8th Cir. 2019) (holding that a Nebraska conviction for false reporting is a CIMT because it requires intent to impede an actual criminal investigation); *Afamasaga v. Sessions*, 884 F.3d 1286 (10th Cir. 2018) (finding that conviction for making a false statement in a U.S. passport application requires fraud as an element, because it requires specific intent to receive a benefit); *Kellermann v. Holder*, 592 F.3d 700, 703–05 (6th Cir. 2010) (holding convictions for making a false statement to a government agency and conspiracy to make a false statement are CIMTs because they involved fraudulent statements with intent to obtain benefit and defraud); *Rodriguez v. Gonzales*, 451 F.3d 60 (2d Cir. 2006) (finding that conviction for making a false statement in a U.S. passport application was a CIMT because it required intent to impair the efficiency and lawful functioning of the government by knowingly lying to obtain a government benefit); *Carty v. Ashcroft*, 395 F.3d 1081 (9th Cir. 2005) (finding willful failure to file tax returns with intent to evade taxes implicitly involves an intent to defraud and thus is a CIMT); *Kabongo v. I.N.S.*, 837 F.2d 753 (6th Cir. 1988) (holding conviction for making false statements in order to obtain student financial aid is a CIMT because intent to defraud); *Matter of Pinzon*, 26 I. & N. Dec. 189, 194 (B.I.A. 2013) (making a false statement to a government official with intent to deceive is a CIMT, intent to defraud is not required; “an offense that involves impairing or obstructing a function of the Government by deceit, graft, trickery, or dishonest means is a crime involving moral turpitude”); *Matter of Correa-Garces*, 20 I. & N. Dec. 451 (B.I.A. 1992) (holding convictions for making false statements on an application for a U.S. passport and for using a false social security number in order to obtain a passport are CIMTs)].
- False personation is not a CIMT if it does not require intent to harm others or actual harm. *Nunez-Vasquez v. Barr*, 965 F.3d 272, 283 (4th Cir. 2020) (giving false information to a police officer to avoid arrest or other consequences is not a CIMT because it does not necessarily involve harm to the government); *Pereida v. Barr*, 916 F.3d 1128 (8th Cir. 2019) (holding no intent to deceive required); *Flores-Molina v. Sessions*, 850 F.3d 1150, 1160–64 (10th Cir. 2017) (giving false information to a police officer is not a CIMT because it does not require specific intent to harm or gain a benefit

at another's expense). [*But see Veloz-Luvevano v. Lynch*, 799 F.3d 1308 (10th Cir. 2015) (holding Colorado criminal personation statute was a CIMT because fraud was inherent to the statute); *De Martinez v. Holder*, 770 F.3d 823 (9th Cir. 2014) (holding Arizona criminal impersonation statute was a CIMT because intent to defraud is an element of the crime); *Guardado-Garcia v. Holder*, 615 F.3d 900, 902 (8th Cir. 2010) (granting deference to BIA's determination that misuse of a social security card is a CIMT)].

- Offense involving knowingly possessing an altered immigration document is not a CIMT if intent to use the document unlawfully is not an element of the offense. *Matter of Serna*, 20 I. & N. Dec. 579 (B.I.A. 1992) (holding federal statute not a CIMT because only required knowledge that document was altered, not intent to use the document to defraud the government. [*But see Sasay v. Att'y. Gen.*, 13 F.4th 291 (3d Cir. 2021) (holding federal aggravated identity theft conviction is a CIMT upon finding that the offense did not criminalize mere possession since, applying modified categorical approach, the court found that the underlying felony violation involved fraud); *Omagah v. Ashcroft*, 288 F.3d 254 (5th Cir. 2002) (holding that conspiracy to use fraudulent immigration documents constitutes a CIMT because the conviction includes an element of fraud, and intent to deceive makes it a CIMT)]).
- Using a false social security number may not be a CIMT. *See Arias v. Lynch*, 834 F.3d 823 (7th Cir. 2016) (using a false social security number is not categorically a CIMT where statute did not require intent to defraud the government); *Abmed v. Holder*, 324 Fed. App'x. 82 (2d Cir. 2009) (holding that falsely claiming a social security number is not a CIMT because it did not rise to conscience-shocking conduct and, intent to deceive is not sufficient to make it a CIMT; rather, it, must involve intent to defraud, which requires intent to obtain some benefit or cause a detriment); *Beltran-Tirado v. I.N.S.*, 213 F.3d 1179, 1184 (9th Cir. 2000) (use of false social security number to obtain employment not a CIMT). [*But see Munoz-Rivera v. Wilkinson*, 986 F.3d 587 (5th Cir. 2021) (concluding that the unauthorized use of a Social Security Number is a CIMT because it “necessarily harms the government” since it “disrupts the ability of the government to oversee the management of social security accounts; impacts legitimate tax collection efforts; and imposes a public cost in efforts to protect personal information”); *Marin-Rodriguez v. Holder*, 710 F.3d 734 (7th Cir. 2013) (ruling use of false social security card to obtain employment involves inherently deceptive conduct and is thus a CIMT); *Lateef v. U.S. Dep't of Homeland Sec.*, 592 F.3d 926 (8th Cir. 2010) (finding federal conviction for using a Social Security number based upon false information in order to receive a benefit is a CIMT because requires intent to deceive); *Serrato-Soto v. Holder*, 570 F.3d 686, 692 (6th Cir. 2009) (declining to follow *Beltran-Tirado* and following *Hyder*; fraudulent use of a social security number is a CIMT, crimes of dishonesty, not just fraud, are CIMTs); *Hyder v. Keisler*, 506 F.3d 388 (5th Cir. 2007) (declining to follow *Beltran-Tirado* and holding misuse of a Social Security Number obtained by fraud to be a CIMT because crimes involving intentional deception are generally CIMTs)].
- Passing bad checks is not a CIMT if it does not require intent to defraud. *Matter of Balao*, 20 I. & N. Dec. 440, 443 (B.I.A. 1992) (holding passing bad checks not a CIMT because legislative history demonstrated intent to defraud is not an essential element of the crime; statute requires only “knowing” issuance of bad checks, not specific intent); *Matter of Zangwill*, 18 I. & N. Dec. 22 (B.I.A. 1981) (holding passing bad checks with knowledge of insufficient funds in violation of

Florida state law to not be a CIMT because conviction does not require showing intent to defraud); *Matter of Khalik*, 17 I. & N. Dec. 518 (B.I.A. 1980) (holding conviction under Michigan bad checks statute was a CIMT because it required intent to defraud). [*But see Matter of Bart*, 20 I. & N. Dec. 436 (B.I.A. 1992) (holding that knowledge that the check will bounce establishes an intent to defraud and thus constitutes a CIMT); *Matter of Logan*, 17 I. & N. Dec. 367, 368 (B.I.A. 1980) (finding that “guilty knowledge” element is sufficient to make passing bad checks a CIMT when “with intent to defraud” is included in statutory language)].

b) Assault offenses

- Simple assault is not a CIMT. *Uppal v. Holder*, 605 F.3d 712 (9th Cir. 2010) (holding simple assault and battery are not categorically CIMTs because not sufficiently “evil”); *U.S. ex rel. Zaffarano v. Corsi*, 63 F.2d 757 (2d Cir. 1933) (holding New York second degree assault is not categorically a CIMT); *Matter of Abortalejo-Guzman*, 25 I. & N. Dec. 465 (B.I.A. 2011) (holding simple assault is not a CIMT unless it necessarily involves an aggravating factor that indicates moral depravity, such as the use of a deadly weapon). Neither is simple assault of an officer. *Zaranska v. U.S. Dep’t of Homeland Sec.*, 400 F. Supp. 2d 500 (E.D.N.Y. 2005) (holding New York second degree assault on a peace officer is not a CIMT); *Ciambelli ex rel. Maranci v. Johnson*, 12 F.2d 465 (D. Mass. 1926) (holding simple assault and battery on a police officer is not a CIMT because no felonious intent). [*But see Matter of Solon*, 24 I. & N. Dec. 239 (B.I.A. 2007) and *Guevara v. Holder*, 533 F. App’x 23 (2d Cir. 2013) (finding New York third degree assault with intent to cause physical injury is a CIMT because it involves specific intent to injure)].
- An assault offense is not a CIMT if the statute does not require culpable mens rea. *Molina Hernandez v. Whitaker*, 914 F.3d 430 (6th Cir. 2019) (holding Michigan felonious assault statute is not categorically a CIMT since the offense does not necessarily involve intent to injure as it also reaches intent to place the victim in apprehension of an immediate battery, citing *Hanna v. Holder*, 740 F.3d 379, 387-90 (6th Cir. 2014) (holding Michigan felonious assault statute is not categorically a CIMT); *Uppal v. Holder*, 605 F.3d 712 (9th Cir. 2010) (holding Canadian aggravated assault statute is not categorically a CIMT because it does not require specific intent to injure, only negligence); *Jean-Louis v. U.S. Att’y Gen.*, 582 F.3d 462 (3d Cir. 2009) (holding that Pennsylvania simple assault against a child under 12 requires only reckless conduct and thus is not a CIMT); *Fernandez-Ruiz v. Gonzales*, 468 F.3d 1159, 1163–69 (9th Cir. 2006) (holding that Arizona misdemeanor assault and domestic assault statutes are not CIMTs because they do not require willful intent); *Gill v. I.N.S.*, 420 F.3d 82, 90 (2d Cir. 2005) (holding that New York attempted reckless assault is not a CIMT because no clear mental state is required, “let alone the sort of aggravated recklessness that has been found to demonstrate moral turpitude”); *Partyka v. U.S. Att’y Gen.*, 417 F.3d 408 (3d Cir. 2005) (holding that New Jersey third degree assault on a law enforcement officer is not a CIMT because it only required negligent state of mind); *Matter of Perez-Contreras*, 20 I. & N. Dec. 615 (B.I.A. 1992) (holding that Washington third degree assault is not a CIMT because only required negligent mens rea, even where conduct causes considerable suffering). [*But see Cano v. U.S. Att’y Gen.*, 709 F.3d 1052, 1054 (11th Cir. 2013) (resisting a police officer using violence is a CIMT because it requires intentional violent force); *Matter of Solon*, 24 I. & N. Dec. 239 (B.I.A. 2007) (holding that New York third degree assault was a CIMT where statute required specific intent to cause physical injury and actual physical injury)].