Why the Fourth Circuit Should Find That Falsifying a Social Security Number Is Not a Crime Involving Moral Turpitude*

Crimes involving moral turpitude have been defined as being inherently base, vile, and depraved. The ambiguous nature of this definition has often left the circuit courts struggling to classify crimes as involving moral turpitude in a unified way. In fact, the circuit courts have long disagreed about whether the crime of falsifying a Social Security number involves moral turpitude. This is a crime that is often committed by noncitizens seeking to obtain employment in the United States. And a conviction for a crime involving moral turpitude can lead to severe consequences for an individual's immigration status. In February of 2022, the Eleventh Circuit suggested that the crime of falsifying a Social Security number does not automatically involve moral turpitude. This Recent Development examines this decision and argues that a conviction for falsely representing a Social Security number should not be considered a crime involving moral turpitude in the Fourth Circuit.

INTRODUCTION

A conviction for a crime involving moral turpitude ("CIMT") can lead to tremendous consequences for noncitizens.[1] Specifically, noncitizens who are convicted of a CIMT usually become ineligible to receive a special form of discretionary relief known as cancellation of removal.[2] The opportunity for cancellation of removal is a "narrow but golden lifeline" for noncitizens who

1. *See* Kathy Brady, *All Those Rules About Crimes Involving Moral Turpitude*, IMMIGRANT LEGAL RES. CTR. 1 (June 2021) [hereinafter Brady, *All Those Rules*], https://www.ilrc.org/sites/default/files/resources/all_those_rules_cimt_june_2021_final.pdf [https://perma.cc/SS94-HWK7] (explaining that a CIMT can "make a noncitizen deportable, inadmissible, and/or barred from relief"). In 2021, President Biden sent a bill to Congress known as the U.S. Citizenship Act of 2021. H.R. 1177, 117th Cong. (2021); *Fact Sheet: President Biden Sends Immigration Bill to Congress as Part of His Commitment To Modernize Our Immigration System*, WHITE HOUSE (Jan. 20, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-biden-sends-immigration-bill-to-congress-as-part-of-his-commitment-to-modernize-our-immigration-system/ [https://perma.cc/8FEE-LL7M]. Part of what the Act sought to do was change the word "alien" to "noncitizen" in our immigration laws. H.R. 1177 § 3. In the U.S. Code, "alien" is defined as "any person not a citizen or national of the United States." 8 U.S.C. § 1101(3); *see also* Daniel R. Alvord & Cecilia Menjivar, *The Language of Immigration Coverage:* The Arizona Republic *and Media's Role in the Production of Social Illegality*, 65 SOCIO. PERSPS. 461, 477 (2022) (concluding that the term "illegal" is dehumanizing to immigrants and use of the term by the media "has detrimental effects on immigrant populations").

2. *See* Brady, *All Those Rules*, *supra* note 1, at 23 (stating the general rule that one CIMT is enough to bar eligibility for a noncitizen, but if the offense carries a maximum sentence of one year and the sentence imposed is for six months or less, the noncitizen may still be eligible for cancellation of removal).

face deportation because it allows certain individuals to become legal permanent residents of the United States.[3] Thus, the conviction of a CIMT can have major repercussions for immigrants seeking a path towards citizenship. The circuit courts differ in what crimes classify as involving moral turpitude.[4] In particular, they disagree about whether the crime of falsifying a Social Security number ("SSN") under 42 U.S.C. § 408(a)(7)(B) constitutes a CIMT, and in 2022, the Eleventh Circuit added to the discussion by suggesting that a conviction under this statute may not automatically involve moral turpitude and, therefore, should not be classified as a CIMT.[5]

This Recent Development argues that a conviction under § 408(a)(7)(B) for unauthorized use of an SSN should not be categorized as a CIMT in the Fourth Circuit. This Recent Development will be organized in four parts. Part I will provide background information on how CIMTs relate to the cancellation of removal benefit and how courts analyze whether a particular offense is a CIMT; Part II will look at the language of § 408(a)(7)(B) and explore why this crime is particularly salient to undocumented immigrants; Part III will compare how various circuits have ruled on the issue of whether to classify the unauthorized use of an SSN as a CIMT; and Part IV will elucidate how the Fourth Circuit should treat the question of whether the unauthorized use of an SSN constitutes a CIMT.

I. BACKGROUND INFORMATION

Immigration judges, through the responsibility delegated to them by the Attorney General, are authorized to order the deportation or removal of a noncitizen who falls within one of the deportable classes enumerated in 8 U.S.C. § 1227(a).[6] Cancellation of removal is one of a few forms of relief available to noncitizens facing removal proceedings.[7] Noncitizens who are granted cancellation of removal avoid deportation and are given legal

3. Claire Lisker, *Falsifying a Social Security Number Is Not Morally Turpitudinous*, N.Y.U. PROC. (Oct. 6, 2022), https://proceedings.nyumootcourt.org/2022/10/falsifying-a-social-security-number-is-not-morally-turpitudinous/ [https://perma.cc/7VQJ-R8CG].

4. *See, e.g.*, Beltran-Tirado v. Immigr. & Naturalization Serv., 213 F.3d 1179, 1185 (9th Cir. 2000) (holding that using a false SSN is not a CIMT); Munoz-Rivera v. Wilkinson, 986 F.3d 587, 593 (5th Cir. 2021) (holding that using an unauthorized SSN is categorically a CIMT); Guardado-Garcia v. Holder, 615 F.3d 900, 903 (8th Cir. 2010) (holding that using a false SSN is a CIMT).

5. Zarate v. U.S. Att'y Gen., 26 F.4th 1196, 1208 (11th Cir. 2022).

6. 8 U.S.C. § 1227(a) (including individuals who have committed certain crimes, violated the terms of their admission into the United States, and individuals who have been unlawfully present in the United States as deportable classes); *see also* Christen Chapman, *Relief from Deportation: An Unnecessary Battle*, 44 LOY. L.A. L. REV. 1529, 1529 (2011) ("Because it is relatively easy for the government to prove deportability, most removal hearings turn on the noncitizen's application for relief.").

7. *See* Margot K. Mendelson, *Constructing America: Mythmaking in U.S. Immigration Courts*, 119 YALE L.J. 1012, 1034 (2010) ("[C]ancellation of removal is something of a last resort . . . .").

permanent resident status.[8] To be eligible, a nonpermanent resident,[9] or noncitizen who has yet to be granted the privilege of residing permanently in the United States, must (1) have been continuously present in the United States for at least ten years; (2) be a person of good moral character during that period; (3) not have been convicted of certain crimes, including those involving moral turpitude; and (4) establish that their removal would lead to "exceptional and extremely unusual hardship" to their U.S.-citizen spouse, parent, or child.[10] Eligibility often turns on judicial determinations about an undocumented noncitizen's good moral character and the exceptional and extremely unusual hardship that the noncitizen's deportation would cause the listed U.S.-citizen family members.[11] Furthermore, because the elimination of a removal order is discretionary, the immigration judge "is under no duty to cancel removal."[12]

Conviction of a CIMT can bar noncitizen eligibility for cancellation of removal in two ways: crimes of this nature are considered disqualifying convictions under element (3) as enumerated above, and such a conviction is also seen as a violation of the good moral character requirement under element (2).[13] Thus, as an important part of the good moral character analysis and the overall eligibility scheme, a conviction of a CIMT can have major implications on a noncitizen's legal status. However, as important as this category of crimes is, no statute defines the term "crime involving moral turpitude."[14]

Instead, in determining whether a crime constitutes a CIMT, courts "have been left to case-by-case adjudication by administrative and judicial tribunals for over a century."[15] Moreover, courts must give deference to the general standards established by the Board of Immigration Appeals ("BIA")[16] in

8. 8 U.S.C. § 1229b(b).

9. *Id.*; 8 U.S.C. § 1101(20). While both permanent and nonpermanent residents can seek cancellation of removal, this Recent Development will focus on nonpermanent residents. 8 U.S.C. § 1229b(a)–(b). For permanent residents, the requirements are less stringent. Chapman, *supra* note 6, at 1549.

10. 8 U.S.C. § 1229b(b); *see also* 8 U.S.C. § 1182(a)(2) (stating that noncitizens who are convicted of a CIMT are inadmissible, and therefore are generally barred from the relief granted by cancellation of removal).

11. Mendelson, *supra* note 7, at 1034–35.

12. Chapman, *supra* note 6, at 1549; *see also* 8 U.S.C. § 1229b(b).

13. *See Non-LPR Cancellation of Removal*, IMMIGRANT LEGAL RES. CTR. 4–8 (June 2018), https://www.ilrc.org/sites/default/files/resources/non_lpr_cancel_remov-20180606.pdf [https://perma.cc/N8H9-GPJ3] (detailing both the criminal bars and the requirement of good moral character for noncitizen cancellation of removal).

14. *See* Lisker, *supra* note 3 (describing that the cancellation of removal statute does not define CIMT).

15. Zarate v. U.S. Att'y Gen., 26 F.4th 1196, 1199 (11th Cir. 2022).

16. The BIA "is the highest administrative body for interpreting and applying immigration laws" and "has been given nationwide jurisdiction to hear appeals from certain decisions rendered by Immigration Judges." *Board of Immigration Appeals*, EXEC. OFF. FOR IMMIGR. REV., https://www.justice.gov/eoir/board-of-immigration-appeals [https://perma.cc/UJ6J-FFUX] (last updated Apr. 16, 2024). BIA decisions are typically subject to judicial review in federal courts. *Id.*

interpreting and applying our immigration laws.[17] According to the BIA, "moral turpitude refers generally to conduct that is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general."[18] Therefore, a crime that exhibits both "reprehensible conduct and a culpable mental state" will involve moral turpitude.[19]

The BIA has asserted that the categorical approach provides the proper framework for determining whether a crime can be regarded as a CIMT.[20] Under this approach, immigration judges and the BIA first examine the language of the relevant criminal statute to discern whether it fits within the BIA's definition of a morally turpitudinous crime.[21] Courts will then "focus on the minimum conduct that has a realistic probability of being prosecuted under the statute of conviction" and compare that to the generic definition of a CIMT.[22] In this assessment, courts only look at the criminal statute and the elements required for a conviction and do not consider the specific facts of a given case.[23] In other words, to determine whether a crime categorically involves moral turpitude, the adjudicator will compare the definition of a CIMT with the statutory elements of the crime in question and identify whether the minimum conduct required to obtain a conviction under the statute still fits the definition of a CIMT.[24] If a crime can be committed in a way that does not involve moral turpitude, that crime will not be categorized as a CIMT.[25]

II. THE CRIME OF FALSELY REPRESENTING AN SSN

The guiding metrics established by the BIA for categorizing offenses that involve moral turpitude often generate different results across the circuits. The

17. *See* Negusie v. Holder, 555 U.S. 511, 516–17 (2009) (indicating that "the BIA is entitled to deference in interpreting ambiguous provisions of the [Immigration and Nationality Act]," which includes the cancellation of removal provision); *In re* Sejas, 24 I. & N. Dec. 236, 237 (B.I.A. 2007) (explaining that the immigration courts will use the working definition of "moral turpitude" established by the BIA, and "seek guidance from court decisions in the convicting jurisdiction" if needed).

18. *In re* Torres-Varela, 23 I. & N. Dec. 78, 83 (B.I.A. 2001).

19. *In re* Silva-Trevino, 26 I. & N. Dec. 826, 834 (B.I.A. 2016) (citing Nino v. Holder, 690 F.3d 691, 695 (5th Cir. 2012)).

20. *See id.* at 827, 831; Kathy Brady, *How to Use the Categorical Approach Now (2021)*, IMMIGRANT LEGAL RES. CTR. 3 (Oct. 2021) [hereinafter Brady, *How to Use the Categorical Approach*], https://www.ilrc.org/sites/default/files/resources/2021_categorical_approach_oct_final2.pdf [https://perma.cc/V7QP-D9HD] ("[I]mmigration authorities must use the 'categorical approach' to determine whether a criminal conviction triggers a ground of removal.").

21. *Silva-Trevino*, 26 I. & N. at 831.

22. *Id.* (stating that the BIA refers to this as the realistic probability test).

23. Brady, *How to Use the Categorical Approach*, *supra* note 20, at 5 ("Here we do not look at what the client actually did, or even what they pled guilty to doing.").

24. *Id.* at 9.

25. *See id.*

circuits disagree about whether violations under § 408(a)(7)(B) constitute offenses involving moral turpitude.[26] Under this statute,

> [w]hoever . . . for any . . . purpose . . . with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person . . . shall be guilty of a felony . . . .[27]

Thus, to prove a violation under § 408(a)(7)(B), the government must show that the defendant falsely represented an SSN for any purpose and with the intent to deceive. A conviction for the misrepresentation of an SSN may lead to a prison sentence of up to five years, a fine of up to $250,000, or both.[28]

Charges under § 408(a)(7)(B) typically arise in situations where an individual misrepresents an SSN—for example, when he or she opens a bank account, applies for a credit card, rents an apartment or car, or applies for employment.[29] SSNs are incredibly powerful in today's society—they are the key to receiving Social Security benefits, paying taxes, applying for loans, and more.[30] Furthermore, since 1986, SSNs have been crucial for obtaining employment, which has had a tremendous impact on undocumented immigrants.[31] In fact, Congress enacted the Immigration Reform and Control Act ("IRCA") in 1986 with the goal of preventing unauthorized immigrants from being hired.[32] The IRCA makes it illegal to knowingly hire or continue to employ someone who is unauthorized to work.[33] Employers must verify that

26. *See Crim-Imm Case Law Updates 2022*, NAT'L IMMIGR. PROJECT OF THE NAT'L LAWS. GUILD 5 (2022), https://www.immigrationadvocates.org/nonprofit/alerts/attachment.397333 [https://perma.cc/UW4J-LR9R] (explaining that the Eleventh Circuit held that falsely representing a Social Security number under 42 U.S.C. § 408(a)(7)(B) is not a CIMT, but other circuits, like the Fifth Circuit, have held that it is).

27. 42 U.S.C. § 408(a)(7)(B).

28. *See id.*; 18 U.S.C. § 3571(b)(3).

29. John K. Webb, *Prosecuting Title II Cases: Protecting the Social Security Trust Funds from Fraud*, U.S. ATT'YS' BULL. (Exec. Off. for U.S. Att'ys, Columbia, S.C.), Nov. 2004, at 9, https://www.justice.gov/sites/default/files/usao/legacy/2006/02/14/usab5206.pdf [https://perma.cc/M7KN-3FFC].

30. *False Social Security Numbers*, CRIM. LAW. GRP., https://www.criminallawyergroup.com/practice-areas/immigration-crimes/false-social-security-numbers/ [https://perma.cc/XE45-QS2A].

31. Nneka Obiokoye, *Taxation of Undocumented Immigrants: The Uneasy Connection Between Regulating the Undocumented Immigrant and Fostering Illegal Activity*, 2 BUS., ENTREPRENEURSHIP & TAX L. REV. 359, 388 (2018).

32. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified as amended in scattered sections of 5, 7, 8, 20, 26, 29, 31, 40, 42, and 50 U.S.C.); Francine J. Lipman, *The Taxation of Undocumented Immigrants: Separate, Unequal, and Without Representation*, 9 HARV. LATINO L. REV. 1, 21 (2006).

33. 8 U.S.C. § 1324a(a).

the person they are seeking to hire is authorized to work, and they can do so by examining the individual's Social Security card or other relevant document.[34]

Thus, because SSNs are typically only assigned to citizens of the United States and legal permanent residents,[35] noncitizens who lack work authorization[36] are left with few options but to "obtain [an] SSN through illegal means, furnish a false SSN, or work in the underground economy."[37] This is particularly important in the discussion of whether a violation under § 408(a)(7)(B) constitutes a CIMT because an undocumented immigrant who falsely represents an SSN may not be doing so from a morally corrupt place and with an intent to defraud. Rather, the immigrant's illegal conduct may be motivated simply by a need to survive and participate in the United States economy.[38]

III. ANALYZING THE CIRCUIT SPLIT: DOES USE OF AN UNAUTHORIZED SSN CONSTITUTE A CIMT?

Courts have come to different conclusions on whether a violation under § 408(a)(7)(B) constitutes a CIMT. The crux of these distinct opinions comes down to whether the circuit believes that the element of dishonesty is by itself enough to classify an offense as a CIMT or if more is needed to meet the moral turpitude standard.[39] In a much-cited case from 1951, the Supreme Court established that crimes involving an element of fraud are certainly within the scope of moral turpitude.[40] Fraud has been defined as "a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment."[41] The circuits that classify violations of § 408(a)(7)(B) as involving moral turpitude tend to apply the holding of this Supreme Court case broadly to encompass crimes that involve an element of

34. 8 U.S.C. § 1324a(b)(1)(C).

35. Obiokoye, *supra* note 31, at 388.

36. 8 C.F.R. § 274a.12 (2024) (enumerating the classes of noncitizens that are authorized to work in the United States, including lawful permanent residents, refugees, noncitizens granted Temporary Protective Status, and noncitizens granted deferred action).

37. *See* Obiokoye, *supra* note 31, at 388. *But see* Kit Johnson, *Lawful Work While Undocumented: Business Entity Solutions*, 64 ARIZ. L. REV. 89, 98 (2022) ("[T]he term 'employee' does not include those engaged in casual domestic service nor independent contractors. These are, accordingly, two common categories of employment that are outside the scope of IRCA . . . ." (quoting 8 C.F.R. § 274a.1(f) (2020))). Another way for noncitizens who lack work authorization to avoid triggering the IRCA sanctions against employers for hiring them is to form their own businesses. *Id.* at 111.

38. *See infra* Section III.B, Part IV. Noncitizens can apply for an Individual Tax Identification Number ("ITIN") that will allow them to file taxes without needing to identify an SSN, but this number does not confer immigration status or work authorization, and thus, does not do much for noncitizens seeking to obtain employment. *See* Obiokoye, *supra* note 31, at 386–87.

39. *See* Hans Christian Linnartz, *Lies, Damn Lies, and Lies Involving Moral Turpitude: When Does a False Statement Carry Immigration Consequences?*, 11 CHARLESTON L. REV. 665, 675–76 (2017).

40. Jordan v. De George, 341 U.S. 223, 232 (1951).

41. Linnartz, *supra* note 39, at 681.

deception or dishonesty and not just fraud.[42] This understanding of the Supreme Court's finding in *Jordan v. De George*[43] has both its merits and its drawbacks. On the one hand, grouping fraud and deceit together in this context assists the government in its efforts to guard against the misuse of SSNs and in advancing its policy of taking strong action against undocumented immigrants.[44] However, noncitizens who commit this crime often do so to seek employment and support their families,[45] which can be difficult to square with the BIA's moral turpitude standard of conduct that is "inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society . . . ."[46]

In February of 2022, the Eleventh Circuit deepened the existing circuit split regarding the question of whether a conviction under § 408(a)(7)(B) constitutes a CIMT in *Zarate v. U.S. Attorney General*.[47] In *Zarate*, the Eleventh Circuit held that the BIA erred in finding that falsely representing an SSN is a CIMT and remanded the case back to the BIA.[48] Prior to this decision, in 2021, the Fifth Circuit held, in *Munoz-Rivera v. Wilkinson*,[49] that a violation under § 408(a)(7)(B) does constitute a CIMT.[50] In this part, I will discuss these rulings in more detail. In Section III.A, I will examine the Fifth Circuit's decision in *Munoz-Rivera* as well as *Guardado-Garcia v. Holder*,[51] a case from the Eighth Circuit that was decided using similar reasoning.[52] In Section III.B, I

42. *See* Munoz-Rivera v. Wilkinson, 986 F.3d 587, 591 (5th Cir. 2021); Guardado-Garcia v. Holder, 615 F.3d 900, 902 (8th Cir. 2010); Hyder v. Keisler, 506 F.3d 388, 393 (5th Cir. 2007) (emphasizing that Fifth Circuit precedent "establish[es] that crimes involving intentional deception as an essential element are generally CIMTs"); Arias v. Lynch, 834 F.3d 823, 828 (7th Cir. 2016) ("We and other courts have sometimes used broader language, writing that any crime involving the larger concept of 'deception' . . . involves moral turpitude.").

43. 341 U.S. 223 (1951).

44. *See Munoz Rivera*, 986 F.3d at 592 (stating that misuse of an SSN "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"); *Protecting Privacy and Preventing Misuse of Social Security Numbers*, OFF. OF THE INSPECTOR GEN. SOC. SEC. ADMIN. (May 22, 2001), https://oig.ssa.gov/congressional-testimony/2001-05-22-newsroom-congressional-testimony-protecting-privacy-and-preventing-misuse-social-security-numbers/ [https://perma.cc/7XJY-R8LZ] ("[M]y office is charged with protecting Social Security programs from fraud, waste, and abuse. No aspect of our mission is more important than our oversight of the use—and misuse—of the Social Security account number . . . ."); *see also* 8 U.S.C. § 1324a (codifying Congress's efforts to reduce illegal immigration by establishing an employment verification system that requires employers to check the SSN of prospective employees).

45. *See infra* Section III.B, Part IV.

46. *In re* Sejas, 24 I. & N. Dec. 236, 237 (B.I.A. 2007) (quoting *In re* Olquin 23 I. & N. Dec. 896, 896 (B.I.A. 2006)).

47. 26 F.4th 1196 (11th Cir. 2022).

48. *Id.* at 1209.

49. 986 F.3d 587 (5th Cir. 2021).

50. *Id.* at 593.

51. 615 F.3d 900 (8th Cir. 2010).

52. *See id.* at 903.

will analyze the *Zarate* court's opinion as well as *Beltran-Tirado v. Immigration and Naturalization Service*,[53] a comparable decision coming out of the Ninth Circuit.[54]

A. *Circuit Decisions Holding That Falsifying an SSN Is a CIMT*

In 2015, Fernando Munoz-Rivera, a Mexican citizen, was convicted of falsifying an SSN under § 408(a)(7)(B) after using a false SSN to obtain employment and provide for his family, including his two U.S.-citizen children.[55] Munoz-Rivera was then placed in removal proceedings.[56] The immigration judge held that a violation of § 408(a)(7)(B) was a CIMT, denied Munoz-Rivera's application for cancellation of removal, and ordered deportation.[57] The BIA upheld the immigration judge's decision.[58] The case was appealed to the Fifth Circuit Court of Appeals, which affirmed the BIA and the immigration judge's decisions.[59]

In deciding that Munoz-Rivera had been convicted of a CIMT, the court noted that it defers to the BIA in defining moral turpitude as "conduct that shocks the public conscience as being inherently base, vile, or depraved."[60] The court then applied the categorical approach and concluded that even the minimum conduct criminalized under § 408(a)(7)(B) constitutes a CIMT because, historically, in the Fifth Circuit, a crime involving intentional deception automatically classifies as a CIMT,[61] and a violation of § 408(a)(7)(B) "necessarily involves intentional deception."[62] The court went even further by stating that even if deceptive intent is not dispositive and some further aggravating element is required to classify the offense as a CIMT, the same

53. 213 F.3d 1179 (9th Cir. 2000).

54. *See id.* at 1186.

55. *Munoz-Rivera*, 986 F.3d at 589; Brief of Immigrant Advocacy Organizations & Immigration Practitioners as Amici Curiae in Support of Petitioner at 6, *Munoz-Rivera*, 986 F.3d 587 (No. 20-1828), 2021 WL 3421351, at *6.

56. *Munoz-Rivera*, 986 F.3d at 589.

57. *Id.* at 589–90.

58. *Id.*

59. *Id.* at 590, 593.

60. *Id.* at 590–91 (quoting Omagah v. Ashcroft, 288 F.3d 254, 259–60 (5th Cir. 2002)).

61. *E.g.*, Hyder v. Keisler, 506 F.3d 388, 389, 392 (5th Cir. 2007) (finding that Petitioner's violation of 42 U.S.C. § 408(a)(7)(A) for falsely stating that he held a student visa in a Social Security application was a CIMT because the crime involved dishonesty as an essential element); *Omagah*, 288 F.3d at 261–62 (holding that the conspiracy to obtain, possess, and use illegal immigration documents under 18 U.S.C. § 1546 constitutes a CIMT because it involves intentional deceit); Okabe v. Immigr. & Naturalization Serv., 671 F.2d 863, 865 (5th Cir. 1982) (concluding that violating 18 U.S.C. § 201(b)(3) by offering a bribe to an immigration officer is a CIMT because "a corrupt mind is an essential element of the offense").

62. *Munoz-Rivera*, 986 F.3d at 591.

outcome would result.[63] This is because a violation of § 408(a)(7)(B) "necessarily harms the government" by making it difficult for the government to manage Social Security accounts, collect taxes, and minimize the public cost in protecting personal information.[64] Furthermore, the court reasoned that because the intentional deception element of the crime is itself considered morally turpitudinous, the fact that the offense can be committed with any purpose—including a non-turpitudinous purpose—does not save the offense from categorically being considered a CIMT.[65]

The Eighth Circuit, in *Guardado-Garcia*, also held that a § 408(a)(7)(B) offense can be properly classified as a CIMT.[66] In *Guardado-Garcia*, the Eighth Circuit affirmed the BIA's finding that the petitioner's conviction for falsifying an SSN constituted a CIMT because it involved "both an intent to deceive and an impairment of government function."[67] The court went on to say, "[c]rimes involving the intent to deceive or defraud are generally considered to involve moral turpitude."[68] While *Guardado-Garcia* and *Munoz-Rivera* had similar outcomes with both courts siding with the government, in *Guardado-Garcia* the court emphasized that the petitioner had harmed a government interest in the commission of his crime and that this, combined with the petitioner's intent to deceive, worked together to trigger the finding of a CIMT.[69] In contrast, the court in *Munoz-Rivera* held that it was not necessary to find such an aggravating element as long as the intent to deceive was satisfied.[70]

The petitioners in *Munoz-Rivera* and *Guardado-Garcia* were both fathers of U.S.-citizen children, and they used false SSNs to obtain employment and support their families.[71] These petitioners are representative of the many noncitizens who commit offenses under § 408(a)(7)(B) not because they are base, depraved, or immoral, but because they are seeking to support their

63. *Id.* at 592 (defining an aggravating element as "either an element involving the specific intent to defraud the government or an element which necessarily causes harm to another person directly or to the government and society at large by impairing or obstructing a function of the government"). *But see* Arias v. Lynch, 834 F.3d 823, 828 (7th Cir. 2016) (emphasizing that while there is precedent supporting the classification of crimes with an element of deception as involving moral turpitude, these cases also "rely on other aggravating factors, especially actual or intended harm to others").

64. *Munoz-Rivera*, 986 F.3d at 592.

65. *Id.*

66. Guardado-Garcia v. Holder, 615 F.3d 900, 903 (8th Cir. 2010).

67. *Id.* at 901.

68. *Id.* at 902 (quoting Lateef v. Dep't of Homeland Sec., 592 F.3d 926, 929 (8th Cir. 2010).

69. *Id.* at 901 (highlighting that Guardado-Garcia misused an SSN for the purpose of obtaining access to a secured area in an airport, which harmed the government's interest in guarding against potential security threats).

70. Munoz-Rivera v. Wilkinson, 986 F.3d 587, 592 (5th Cir. 2021) ("In other words, deceptive intent is sufficient for an offense to constitute a CIMT.").

71. Brief of Immigrant Advocacy Organizations & Immigration Practitioners as Amici Curiae in Support of Petitioner, *supra* note 55, at 6; Petition for Writ of Certiorari at 2, *Guardado-Garcia*, 615 F.3d 900 (No. 10-992), 2011 WL 381113, at *2.

families and dutifully pay taxes.[72] A finding that a conviction under this statute constitutes a CIMT has major, detrimental impacts on the prospects of both the noncitizen and the noncitizen's family.[73] Yet, the language of the standard the BIA has established for what constitutes a CIMT does not seem to align with many of the circumstances underlying violations of § 408(a)(7)(B). As will be discussed in the next section, several circuits analyze the concepts of fraud and deception as separate and distinct from each other, and, therefore, conclude that an offense under § 408(a)(7)(B) may not be a CIMT.[74]

B. *Circuit Decisions Holding That Falsifying an SSN May Not Be a CIMT*

Recall that to determine whether a crime is a CIMT, the BIA sets out a framework whereby the adjudicator will first apply the categorical approach and consider what the least culpable conduct necessary for a conviction under the relevant statute is.[75] Then, the immigration judge, BIA, or reviewing court will analyze that conduct to ascertain whether it meets the moral turpitude standard.[76] In *Zarate*, the Eleventh Circuit remanded the case back to the BIA because the BIA failed to fully apply this framework in concluding that a violation of § 408(a)(7)(B) is categorically a CIMT.[77] The Eleventh Circuit reasoned that the BIA's finding in this case was "inconsistent with BIA precedent" and "incomplete" because the BIA did not address whether the least culpable conduct necessary to sustain a conviction under § 408(a)(7)(B) "is inherently base, vile, or depraved."[78] The petitioner in that case, Ruperto Hernandez Zarate, used a false SSN to secure employment and finance his child's health care, including cleft palate surgeries.[79]

In examining the first prong of the BIA's analytical framework, the court found that while § 408(a)(7)(B) requires an intent to deceive, this is distinct from a requirement of fraud, which has been defined as a knowing misrepresentation that causes actual harm to another.[80] And the court emphasized that violations of § 408(a)(7)(B) can be committed for nonfraudulent purposes that may not involve moral turpitude.[81] Thus, a

72. Brief of Immigrant Advocacy Organizations & Immigration Practitioners as Amici Curiae in Support of Petitioner, *supra* note 55, at 6; *see infra* Part IV.

73. *Id.* at 7; *see also supra* Part I (discussing the immigration consequences of being convicted for a CIMT).

74. *See infra* Section III.B.

75. Zarate v. U.S. Att'y Gen., 26 F.4th 1196, 1199 (11th Cir. 2022); *see also supra* Part I (describing the categorical approach and the BIA's definition of moral turpitude).

76. *Zarate*, 26 F.4th at 1199.

77. *Id.* at 1208–09.

78. *Id.* at 1199, 1203.

79. Oral Argument at 2:10, *Zarate*, 26 F.4th 1196 (No. 20-11654), https://www.courtlistener.com/audio/77320/ruperto-hernandez-zarate-v-us-attorney-general/ [https://perma.cc/XL43-2ARZ].

80. *Zarate*, 26 F.4th at 1202–03; Linnartz, *supra* note 39, at 681–82 (defining fraud).

81. *Zarate*, 26 F.4th at 1202–03.

violation of this statute cannot be automatically categorized as a CIMT under the theory that an intent to deceive equals an intent to defraud.[82] In coming to this conclusion, the court examined a history of BIA decisions treating the intent to deceive as separate and distinct from the intent to defraud.[83] For example, in *In re B-M-*,[84] the appellant was found to have violated 18 U.S.C. § 1001(a)(2), which makes it a crime to knowingly and willfully "make[] any materially false, fictitious, or fraudulent statement or representation" while "within the jurisdiction" of the federal government.[85] The BIA insisted that, while the statute contains language regarding "fraudulent" statements and representations, this does not make every offense under the provision a CIMT "since the offense may have consisted only of a false and not a fraudulent statement."[86] Furthermore, the BIA found that false statements do not necessarily involve moral turpitude, and, thus, the appellant's crime was not considered a CIMT.[87] Likewise, in *In re Espinosa*,[88] the BIA held that a violation of 18 U.S.C. § 1001(a)(3), which prohibits the use of "any false writing or document" containing "any materially false, fictitious, or fraudulent statement or entry,"[89] also did not constitute a CIMT.[90] Again, the BIA ruled that a conviction under this provision does not compel a finding of moral turpitude because a false statement or entry can be accomplished without fraud.[91]

The court in *Zarate* went on to state that a mere showing of a culpable mental state is not enough to satisfy the moral turpitude standard.[92] Instead, for an offense to be classified as a CIMT, there must be a showing that the least culpable conduct required to sustain a conviction under the relevant statute is base, vile, or depraved, and, thus, always involves moral turpitude.[93] Importantly, in examining the BIA's prior treatment of cases distinguishing fraud from dishonesty, the court observed that the notion that nonfraudulent deceit always involves moral turpitude is inconsistent with BIA precedent.[94] As mentioned previously, since the BIA failed to address this essential prong of

82. *Id.* at 1207; *see also* Jordan v. De George, 341 U.S. 223, 232 (1951) (establishing that crimes with an element of fraud are always regarded as involving moral turpitude).

83. *Zarate*, 26 F.4th at 1203–06 (stating that BIA precedent suggests "that making a false statement or engaging in general deception is not necessarily the same thing as fraud").

84. 6 I. & N. Dec. 806 (B.I.A. 1955).

85. 18 U.S.C. § 1001(a)(2); *In re B-M-*, 6 I. & N. at 806.

86. *In re B-M-*, 6 I. & N. at 808.

87. *Id.* at 809; *see also In re* S-, 2 I. & N. Dec. 353, 361–62 (B.I.A. 1945) (holding that knowingly making false statements in a registration application is not a CIMT).

88. 10 I. & N. Dec. 98 (B.I.A. 1962).

89. 18 U.S.C. § 1001(a)(3).

90. *In re Espinosa*, 10 I. & N. at 99–100.

91. *Id.*

92. Zarate v. U.S. Att'y Gen., 26 F.4th 1196, 1207 (11th Cir. 2022) (emphasizing that the BIA itself had established this standard for moral turpitudinous conduct).

93. *Id.* (defining the term "reprehensible" as conduct that is "inherently base, vile, or depraved").

94. *Id.* at 1208.

the analysis in its initial consideration of *Zarate*, the Eleventh Circuit remanded the case back to the agency to determine whether, under the categorical approach, violations of § 408(a)(7)(B) always involve conduct that is "inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society."[95]

While the Eleventh Circuit did not conclusively find that a violation under § 408(a)(7)(B) does not constitute a CIMT, the Ninth Circuit, in *Beltran-Tirado v. Immigration & Naturalization Service*,[96] held that such a violation does not involve moral turpitude.[97] The Ninth Circuit reached this conclusion by analyzing the legislative history of an amendment Congress made to 42 U.S.C. § 408 in 1990.[98] That amendment was the addition of what is now § 408(e), which provides that immigrants who have been granted permanent resident status under certain statutes are exempt from prosecution for any alleged past uses of a false SSN.[99] Specifically, this exemption was meant to serve "those individuals who use a false social security number to engage in otherwise lawful conduct" such as obtaining employment.[100] The court held that by adding this section to the statute, Congress revealed that it did not intend for certain crimes committed under § 408(a)(7)(B) to be considered as involving moral turpitude.[101] In fact, in the conference committee report regarding this amendment, the conferees stated that individuals benefiting from the exemption "should not be considered to have exhibited moral turpitude with respect to the exempted acts."[102] Thus, while the petitioner was not eligible for the § 408(e) exemption because she was convicted before she could apply for legal permanent resident status, the morality of her conduct did not change because of that timing, and the court found that her violation of § 408(a)(7)(B) did not constitute a CIMT.[103]

In *Zarate*, the petitioner was deemed ineligible for cancellation of removal because the immigration judge found, which was later affirmed by the BIA, that

95. *Id.* at 1208–09 (quoting *In re* Silva-Trevino, 26 I. & N. Dec. 826, 833–34 (B.I.A. 2016)).

96. 213 F.3d 1179 (9th Cir. 2000).

97. *Id.* at 1186.

98. *Id.* at 1183.

99. *Id.*; 42 U.S.C. § 408(e).

100. *Beltran-Tirado*, 213 F.3d at 1183.

101. *Id.*

102. *Id.* (citing H.R. REP. NO. 101-964, at 948 (1990) (Conf. Rep.)).

103. *Id.* at 1184. Furthermore, the court stated that the exemption from prosecution suggests that the petitioner's conduct in violating § 408(a)(7)(B) was mala prohibita, "an act only statutorily prohibited," and not mala in se, "an act inherently wrong." *Id.* Since moral turpitude has been defined as conduct that is per se morally reprehensible and inherently wrong, her violation of § 408(a)(7)(B) does not involve moral turpitude. *Id.*

his prior conviction under § 408(a)(7)(B) qualified as a CIMT.[104] Similarly, in *Beltran-Tirado*, the petitioner also sought relief from deportation, but the immigration judge barred her from such relief after finding that her conviction under § 408(a)(7)(B) made it so she could not satisfy the good moral character requirement.[105] The subsequent holdings by the circuit courts in *Zarate* and *Beltran-Tirado* make it so that sympathetic noncitizens, like the petitioners in those cases, who violate § 408(a)(7)(B) have a greater chance at accessing the "narrow but golden lifeline" that is cancellation of removal.[106]

Prior to both of these decisions, the Seventh Circuit, in *Arias v. Lynch*,[107] remanded a case back to the BIA to reevaluate whether a violation of § 408(a)(7)(B) necessarily involves moral turpitude.[108] The petitioner in *Arias* had lived in the United States for over a decade, had raised her family here, including two U.S.-citizen children, and had filed an income tax return every year.[109] In its opinion, the Seventh Circuit stated:

> It seems inconsistent with the terms "base, vile, or depraved" to hold that an unauthorized immigrant who uses a false social security number so that she can hold a job, pay taxes, and support her family would be guilty of a crime involving moral turpitude, while an unauthorized immigrant who is paid solely in cash under the table and does not pay any taxes would not necessarily be guilty of a crime involving moral turpitude.[110]

Furthermore, in his concurrence, Judge Posner stressed that a violation of § 408(a)(7)(B) "does not require proof of intent to cause harm—an absence that one would think would negate an inference of moral turpitude."[111] Judge Posner described the petitioner as a "harmless person" and "a productive resident of the United States," who used the SSN given to her by the person who smuggled her into the United States to obtain employment, support her family, and pay taxes.[112] In fact, he emphatically stated that "to deport her on the ground that her crime was one of moral turpitude would be downright ridiculous" and "a waste of taxpayers' money."[113] Many of the noncitizens convicted under

104. Zarate v. U.S. Att'y Gen., 26 F.4th 1196, 1199 (11th Cir. 2022) (stating that had it not been for his prior conviction under § 408(a)(7)(B) the immigration judge would have granted Zarate the relief of cancellation of removal).

105. Petitioner's Opening Brief at 8–9, 15, *Beltran-Tirado*, 213 F.3d 1179 (No. 98-70783), 1999 WL 33631675, at *8–9, 15 (stating that Ms. Beltran-Tirado sought deportation relief under the Immigration and Nationality Act ("INA") § 249, INA § 244(a), and INA § 244(e), which are different from cancellation of removal, but still require the element of good moral character to be met).

106. Lisker, *supra* note 3.

107. 834 F.3d 823 (7th Cir. 2016).

108. *Id.* at 830.

109. *Id.* at 825.

110. *Id.* at 829.

111. *Id.* at 833 (Posner, J., concurring).

112. *Id.* at 833–34.

113. *Id.* at 834.

§ 408(a)(7)(B) have stories nearly identical to the petitioner's in *Arias*. And in concluding that violations of § 408(a)(7)(B) are categorically CIMTs, the BIA invoked a broad-reaching rule that encompassed even harmless conduct.[114]

IV. HOW THE FOURTH CIRCUIT SHOULD RULE

While the Fourth Circuit has not considered the question of whether a violation under § 408(a)(7)(B) constitutes a CIMT, there are various policy reasons for why this circuit should find that such an offense is not a CIMT. Moreover, the Fourth Circuit's somewhat conflicting findings in *Cruz v. Garland*[115] and *Nunez-Vasquez v. Barr*[116] reveal that the Fourth Circuit Court of Appeals may have conflicting approaches to settling the matter.

In *Cruz*, which is an unreported case and therefore not binding precedent, the court held that providing a false identification to a police officer with the intent to deceive the officer was categorically a CIMT.[117] There, the court accepted the BIA's assertion that dishonesty and deception without fraud are enough to meet the threshold of moral turpitude.[118] In fact, the court concluded that "the intent to deceive element makes a violation of [the false identification] statute morally turpitudinous."[119]

In *Nunez-Vasquez*, the petitioner sought review of a finding by the BIA that he was ineligible for cancellation of removal because he had been convicted of two CIMTs—one of which was for identity theft under a Virginia statute.[120] The court held that this conviction was not categorically a CIMT because the least culpable conduct criminalized by the relevant Virginia statute is not morally reprehensible.[121] The Virginia statute in question made it illegal "for any person to use identification documents or identifying information of another person, whether that person is dead, or alive, or of a false or fictitious person, to avoid summons, arrest, prosecution, or to impede a criminal investigation."[122] In analyzing this language, the court reasoned that a conviction under this statute does not require fraud, harm to the government,

114. *Id.* at 836.

115. No. 22-1907, 2023 WL 4118011 (4th Cir. June 22, 2023).

116. 965 F.3d 272 (4th Cir. 2020).

117. *Cruz*, 2023 WL 4118011, at *1–2.

118. *Id.* at *3.

119. *Id.* at *5. One judge dissented, stating that "the majority's analysis fails because it never explains why the act of giving a false name to a police officer with the intent to deceive is so egregious that it 'shocks the public conscience as being inherently base, vile, or depraved.'" *Id.* at *5 (Keenan, J., dissenting) (quoting Ramirez v. Sessions, 887 F.3d 693, 704 (4th Cir. 2018)).

120. 965 F.3d at 277–78.

121. *Id.* at 284.

122. *Id.*

or harm to anyone else.[123] Thus, the petitioner's conduct in violating the identity theft statute did not categorically involve moral turpitude.[124]

The ruling in *Nunez-Vasquez* is indicative of how the Fourth Circuit may rule on the question of whether a violation of § 408(a)(7)(B) is a CIMT because § 408(a)(7)(B), like the Virginia statute in that case, also does not, on its face, require an element of fraud or intentional harm to the government or anyone else.[125] Moreover, the court in *Nunez-Vasquez* stated that "the use of false identification, on its own, is not enough to find that a crime involves moral turpitude" and rejected the government's argument that intent to deceive was enough to classify conduct as reprehensible.[126] As the dissent in *Cruz* pointed out, the majority failed to address this part of the *Nunez-Vasquez* decision in its analysis, making it difficult to square these two decisions.[127] Furthermore, while there is precedent showing that statutes requiring an intent to deceive do involve moral turpitude, as the Seventh Circuit points out, most of those cases also "rely on other aggravating factors, especially actual or intended harm to others" in addition to the intent to deceive element.[128]

The court in *Munoz-Rivera* found that "a § 408(a)(7)(B) offense necessarily harms the government."[129] Moreover, the court in *Guardado-Garcia* held that the petitioner's conviction under § 408(a)(7)(B) was a CIMT in part because it served as "an impairment of government function."[130] However, whether or not a violation of § 408(a)(7)(B) is harmful to the government is questionable.[131]

123. *Id.* at 286.

124. *Id.*

125. The statute states that

> "[w]hoever . . . for any other purpose . . . with intent to deceive, falsely represents a number to be the social security number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account assigned . . . shall be guilty of a felony . . . ."

42 U.S.C. § 408(a)(7)(B).

126. *Nunez-Vasquez*, 965 F.3d at 285 n.8.

127. Cruz v. Garland, No. 22-1907, 2023 WL 4118011, at *6 (4th Cir. June 22, 2023) (Keenan, J., dissenting).

128. Arias v. Lynch, 834 F.3d 823, 828 (7th Cir. 2016).

129. Munoz-Rivera v. Wilkinson, 986 F.3d 587, 592 (5th Cir. 2021).

130. Guardado-Garcia v. Holder, 615 F.3d 900, 901 (8th Cir. 2010).

131. *See Arias*, 834 F.3d at 835 (Posner, J., concurring) (stating that petitioner's crime "harmed no one, least of all the government though it is the 'victim' of her crime").

Unauthorized immigrants account for approximately five percent of the labor force in the United States.[132] And in 2010, the United States Social Security Administration's Office of the Chief Actuary ("OCACT") estimated that unauthorized immigrants contributed $13 billion in payroll taxes to the Old-Age, Survivors, and Disability Insurance program, yet unauthorized immigrants only received about $1 billion in benefit payments.[133] The OCACT also stated "that earnings by unauthorized immigrants result in a net positive effect on Social Security financial status generally."[134] Furthermore, in a *New York Times* article, Princeton professor of sociology Douglas Massey is quoted as characterizing taxes paid to the government by unauthorized immigrants as "basically a subsidy from migrant workers to the aggregate of American taxpayers."[135] Additionally, the Center for American Progress reports that undocumented immigrants pay $79.7 billion in federal tax contributions and $41 billion in state and local tax contributions, hold $314.9 billion in spending power, and pay $20.6 billion in annual mortgage payments and $49.1 billion annually in rental payments.[136] This all goes to show that the inquiry of whether falsely representing an SSN harms the government is nuanced and deserving of a more thorough analysis than it received in both *Munoz-Rivera* and *Guardado-Garcia*. If the Fourth Circuit is tasked with determining whether a violation under § 408(a)(7)(B) is a CIMT, it should consider the ways that unauthorized immigrants who commit this offense nevertheless help boost the economy and serve our communities.

132. Jens Manuel Krogstad, Mark Hugo Lopez & Jeffrey S. Passel, *A Majority of Americans Say Immigrants Mostly Fill Jobs U.S. Citizens Do Not Want*, PEW RSCH. CTR. (June 10, 2020), https://www.pewresearch.org/short-reads/2020/06/10/a-majority-of-americans-say-immigrants-mostly-fill-jobs-u-s-citizens-do-not-want [https://perma.cc/B6UL-JA9Y]; *see also RELEASE: Millions of Undocumented Immigrants Are Essential to America's Recovery, New Report Shows*, CTR. FOR AM. PROGRESS (Dec. 2, 2020), https://www.americanprogress.org/press/release-millions-undocumented-immigrants-essential-americas-recovery-new-report-shows/ [https://perma.cc/U7CM-M9LD] (finding that almost three in four undocumented immigrants in the workforce were considered essential workers during the COVID-19 pandemic).

133. Stephen Goss, Alice J. Wade, Patrick Skirvin, Michael K. Morris, Mark Bye & Danielle Huston, *Effects of Unauthorized Immigration on the Actuarial Status of the Social Security Trust Funds*, 151 SOC. SEC. ADMIN. 1, 3 (2013).

134. *Id.* (specifying that in 2010 unauthorized immigrants "contributed roughly $12 billion to the cash flow" of the Old-Age, Survivors, and Disability Insurance program).

135. John Leland, *Immigrants Stealing U.S. Social Security Numbers for Jobs, Not Profits–Americas–International Herald Tribune*, N.Y. TIMES (Sept. 4, 2006), https://www.nytimes.com/2006/09/04/world/americas/04iht-id.2688618.html [https://perma.cc/ZB6C-YVJQ (dark archive)]; *see also* Lipman, *supra* note 32, at 4–7 (stating that because undocumented immigrants pay taxes but are barred from most government benefits, they "provide a fiscal windfall, and may be the most fiscally beneficial of all immigrants").

136. Nicole Prchal Svajlenka, *Protecting Undocumented Workers on the Pandemic's Front Lines*, CTR. FOR AM. PROGRESS (Dec. 2, 2020), https://www.americanprogress.org/article/protecting-undocumented-workers-pandemics-front-lines-2/ [https://perma.cc/8SXF-BJ6M].

The Seventh Circuit writes, and the Fourth Circuit should consider, that "[a] rule that all crimes that involve an element of deception categorically involve moral turpitude would produce results at odds with the accepted definition of moral turpitude as conduct that is 'inherently base, vile, or depraved.'" [137] Many immigrants who violate § 408(a)(7)(B) do so out of necessity to feed their children, access medical care, open a bank account, enroll their children in school, and obtain housing.[138] And as the Eleventh Circuit held in 2016, "to defraud, one must intend to use deception to cause some injury; but one can deceive without intending to harm at all."[139] This is evident in the circumstances under which many noncitizens find themselves committing § 408(a)(7)(B) violations—yes, they deceive by using a false SSN, but that conduct lacks the element of an intent to cause harm. For example, in 2006, Camber Lybbert was informed by her bank that her three-year-old daughter's SSN "was on their files for two credit cards and two auto loans." [140] An unauthorized immigrant was using Lybbert's daughter's SSN "not in pursuit of a financial crime, but in order to get a job."[141] Lybbert was quoted as stating that the man who was falsely representing her daughter's SSN as his "wasn't using it maliciously," rather, "[h]e was using it to have a job, to get a car, provide for his family."[142]

Of course, the government has an interest in protecting its citizens from identify theft, and § 408(a)(7)(B) serves that purpose by imposing criminal liability on individuals convicted of this crime. However, in considering an offense under this statute as categorically a CIMT, the government subjects unauthorized immigrants to "drastic immigration consequences" even when their violation under § 408(a)(7)(B) was committed out of necessity and without intending to cause harm to anyone.[143] In classifying § 408(a)(7)(B) as a CIMT, the government forecloses the already limited and difficult-to-obtain relief of cancellation of removal, which is often an unauthorized immigrant's

137. Arias v. Lynch, 834 F.3d 823, 829 (7th Cir. 2016).

138. Brief of Immigrant Advocacy Organizations & Immigration Practitioners as Amici Curiae in Support of Petitioner, *supra* note 55, at 6.

139. United States v. Takhalov, 827 F.3d 1307, 1313 (11th Cir. 2016); *see also* Nathanael C. Crowley, *Naked Dishonesty: Misuse of a Social Security Number for an Otherwise Legal Purpose May Not Be a Crime Involving Moral Turpitude After All*, 15 SAN DIEGO INT'L L.J. 205, 242 (2013) ("For an analogous logic chain using simpler terms, consider the following: all tigers are mammals, but not all mammals are tigers. Similarly, all crimes of fraud involve deception, but not all instances of deception are fraudulent.").

140. Leland, *supra* note 135.

141. *Id.*

142. *Id.*

143. Brief of Immigrant Advocacy Organizations & Immigration Practitioners as Amici Curiae in Support of Petitioner, *supra* note 55, at 20; *see supra* Part II.

final and only option to remain in the United States after building a life in this country for at least a decade.[144]

Moreover, the accurate application of the term "moral turpitude" is of huge importance in immigration cases, and the lack of a uniform statutory definition only serves to confuse the concept and allow biases to cloud the process of classifying crimes as involving moral turpitude.[145] The lack of a statutory definition of this term has led noncitizens to experience different consequences for the same offenses because jurisdictions across the country analyze and apply the concept of "moral turpitude" in distinct ways.[146] As long as Congress fails to enact a more concrete standard for classifying crimes as involving moral turpitude, courts must abide strictly by the guidelines established by the BIA to ensure that the CIMT designation remains functional.[147] Namely, only conduct that "shocks the public conscience as being inherently base, vile, or depraved" should be classified as involving moral turpitude.[148] Thus, the Fourth Circuit should distinguish between fraud and dishonesty and consider convictions under § 408(a)(7)(B), which require deceit, but not fraud, as not falling within the CIMT codification.[149]

CONCLUSION

The Fourth Circuit, in applying the categorical approach, should read the least culpable conduct necessary to sustain a conviction under § 408(a)(7)(B) as not involving moral turpitude and should, therefore, decline to categorize this offense as a CIMT.[150] The Fourth Circuit should remember that, at bottom, these undocumented immigrants are human beings who require food, shelter, and the ability to provide these basic needs to their loved ones.[151] Laws like the

144. *Non-LPR Cancellation of Removal*, *supra* note 13, at 1, 8 (stating that the exceptional and extremely unusual hardship requirement is often the most difficult requirement to prove in these cases, so even without classifying § 408(a)(7)(B) as a CIMT, this relief is granted on a very limited and narrow basis). Recall that to be eligible for cancellation of removal, the noncitizen must have been physically present in the United States for a continuous period of ten years. 8 U.S.C. § 1229b(b)(1)(A).

145. Crowley, *supra* note 139, at 209–11.

146. *Id.* at 211.

147. *See* Lisker, *supra* note 3.

148. *In re* Danesh, 19 I. & N. Dec. 669, 670 (B.I.A. 1988).

149. Crowley, *supra* note 139, at 240–43.

150. *Id.* at 248 (calling for the Supreme Court of the United States "to provide an unequivocal national rule that misuse of a Social Security number for an otherwise legal purpose is not a crime involving moral turpitude"); *see also* Linnartz, *supra* note 39, at 691 (arguing that "people lie on occasion, motivated by compassion or concern for another's welfare or other innocent purposes" and, thus, "more than intentional falsehood should be required to invoke the penalties associated with" the concept of moral turpitude).

151. *See* Obiokoye, *supra* note 31, at 390; *see also* Lipman, *supra* note 32, at 22–23 (arguing that employers are also subject to this cycle of illegal behavior because, since the employer is required to provide an SSN to the Internal Revenue Service for wages paid to an employee, "[e]mployers desperate

IRCA and judicial opinions like the ones categorizing § 408(a)(7)(B) as a CIMT envelop undocumented immigrants in an "unending cycle of illegal activity" by leaving the individual to decide whether to falsify an SSN or work in the underground economy.[152] With so much at stake for the noncitizen and the noncitizen's family, this should shock the conscious of the public and compel the Fourth Circuit to rule violations of § 408(a)(7)(B) as categorically *not* a CIMT.

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for workers and undocumented immigrants desperate for wages either avoid the system completely through unreported wages, or comply with fraudulently obtained SSNs").

152. *See* Obiokoye, *supra* note 31, at 390.

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