

This case takes place in the San Antonio court which is bound by *Silva-Trevino* as the 5th Circuit has not issued a decision overruling *Silva-Trevino*. That means that the immigration judges have already ruled that the *Silva-Trevino* approach is appropriate and if the categorical and modified categorical approach do not resolve whether this offense is a CIMT, either party may introduce evidence outside the record. Either side may make arguments about the reliability of the extraneous evidence.

In 2007, Jennifer, age 20, who was born in Mexico, and entered without permission or parole when she was three years old, was convicted of assault under Texas Penal Code 22.01 against a family/household member. She received a sentence of 190 days in jail, court costs and a fine. The conviction resulted from a fight that Jennifer got into with her brother Jorge who lived with Jennifer and her parents. She says that she threw a peanut butter jar at him. The complaint states that she struck him on the face, head and body.

The Texas Penal Code has two assault statutes: Assault with bodily injury, Tex. Pen. Code 22.01 under which Jennifer was convicted and Aggravated Assault with serious bodily injury. Tex. Pen. Code. 22.02. (copies attached). A person whose relationship to or association with the defendants under Sec. 71.0021(b), 71.003 or 71.005 of the Family Code referenced in §22.01(b)(2), includes anyone who lives in the same household or who is a family member.

Simple assault when the mensrea is less than intentional and without serious bodily injury is not a CIMT. *Matter of Fualaau*, 21 I. & N. Dec. 475 (BIA 1996). "This general rule does not apply where an assault or battery necessarily involves some aggravating factor that indicates the perpetrator's moral depravity, such as the use of a deadly weapon, or the infliction of serious injury on a person whom society views as deserving of special protection such as children, domestic partner or peace officers." *Matter of Ahortalejo*. 25 I & N Dec. 465 (2011). *Matter of Sanudo* states that "it has often been found that moral turpitude necessarily inheres in assault and battery offenses that are defined by reference to the infliction of bodily harm upon a person whom society views as deserving of special protection, such as a child, a domestic partner, or a peace officer, because the intentional or knowing infliction of injury on such persons reflects a degenerate willingness on the part of the offender to prey on the vulnerable or to disregard his social duty to those who are entitled to his care and protection."

You must determine if Jennifer's conviction:

- 1) constitutes a simple assault and therefore is not a cimt or
- 2) whether it involves "serious injury on a person whom society views as deserving of special protection" ~ and therefore is a cimt.

Review the attached documents and consider their admissibility in light of *Silva Trevino*. Should the documents be admitted, if so why, if not, why not. If the documents are admitted, how would you would use the documents to argue that the conviction is or is not a cimt.

Also available as part of the eCourse

[Deferred Action for Childhood Arrivals \(DACA\) and the DREAM Act; Post-Election: A Look Ahead; plus CIS Ombudsman Introduction](#)

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