My client was an AMERIASIAN immigrant who first came to this country in the early 1990s with his mother. He was abandoned by his US citizen father, so he missed out on the teaching and guidance a father can provide. About ten years later, when he was a new father and was expecting another child, he lost his job. He was worried about taking care of his family. Unfortunately he turned to gambling to try to obtain money to take care of his family and his responsibilities.

He was caught several times using a cheating device in Atlantic City Casinos, and pleaded guilty and was convicted of 3 charges under NJS Title 5:12-114 b. (2) and served less than a year for these crimes. Now more than 15 years after his crime and serving his sentence, the Governments has charged that he is removable for being convicted of 2 Crimes involving moral turpitude ("CIMT").

The Government has the burden of proving that respondent is removable for being convicted of two or more CIMT. According to the accepted categorical approach CIMT is determined by the criminal statute and the record of conviction, not the alien's conduct. See Partyka. v AG of the United States, 417 F.3d 408, 413 (3d Cir. 2005), Jean-Louis v. Attorney General, 582 F.3d 462 (3rd Cir. 2009), and Knapik v. Ashcroft, 384 F.3d 84, 91 (3d Cir. 2004). Accordingly, we must read NJS Title 5:12-114 b. (2) to ascertain the least culpable conduct necessary to sustain a conviction:

> b. It shall be unlawful for any person, playing or using any slot machine in a licensed casino:
> (2) To use any cheating or thieving device, including but not limited to tools, drills, wires, coins or tokens attached to strings or wires, or electronic or magnetic devices, to facilitate the alignment of any winning combination or removing from any slot machine any money or other contents thereof.

A person can be convicted under this statute without knowing he is using a cheating or thieving device, and without having vicious motive or corrupt mind. All the other sections of NJS Title 5:12-114 contain the mens rea of "knowingly," but my client was only convicted under the section where "knowingly" was not required. The accepted test employed by BIA to determine CIMT in a removal proceeding can be found In Matter of Perez-Contreras, 20 I&N Dec. 6 15,6 17-18 (BIA 1992):

> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

Since the required mens rea may not be determined from NJS Title 5:12-114 b. (2), moral turpitude does not inhere.

In addition, violation of gaming laws do not ordinarily involve CIMT. Matter of Gaglioti, 10 I&N Dec. 719, 720 (BIA 1964). In the Matter of G-, 2 IAN Dec. 235 (BIA 1945), depositing a slug in a coin box was a violation of the NY penal law, but fraudulent intent was not an element of the crime, so it was not considered a CIMT. My Client's conviction of using a coin in a slot machine is no different, as fraudulent intent is not an element of the crime, and clearly the result should not be different.

The Government was unable to carry its burden to show he had been convicted of 2 CIMTs, and my client was not removable under the charges brought.