

CAPITAL AREA IMMIGRANTS' RIGHTS (CAIR) COALITION  
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES  
 SECTION I - INCHOATE OFFENSES

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? <sup>1</sup>	COMMENTS AND PRACTICE TIPS
Conspiracy to commit felony	18.2-22	Probably, if underlying offense is a CIMT	Probably, under 8 U.S.C. § 1101(a)(43)(U), if underlying offense is an aggravated felony <sup>2</sup>	Yes, if underlying offense triggers other grounds; see cover memo	Plead to a conspiracy to commit a crime that doesn't trigger immigration consequences  Create affirmative record that no over act occurred in furtherance of conspiracy [FN 2]
Conspiring to trespass or	18.2-23(A) (conspiring	No	No	No	See the practice tips relating to the substantive offenses

<sup>1</sup> Including, but not limited to: controlled substance offense, prostitution offense, commercialized vice offense, firearm offense, crimes of domestic violence, crimes of stalking, and crimes against children.

<sup>2</sup> Immigration practitioners may argue that Virginia's conspiracy statute is not a categorical match to the federal generic definition of "conspiracy" because it does not require an overt act. In *United States v. Garcia*, No. 12-10471 (9th Cir. Feb. 20, 2014), the Ninth Circuit held that the generic definition of "conspiracy" under 8 U.S.C. § 1101(a)(43)(U) includes proof that the defendant committed an overt act in furtherance of the conspiracy and therefore that a conspiracy conviction in a state that does not impose such a requirement cannot qualify as an aggravated felony. Virginia's conspiracy statute does not require an overt act. See, e.g., *Gray v. Commonwealth*, 537 S.E.2d 862, 865 (Va. 2000). Thus, although the Fourth Circuit has not ruled on this issue, defense attorneys should seek to demonstrate on the record when possible that no overt act occurred in furtherance of the conspiracy to preserve the argument that the crime does not constitute an aggravated felony.

\*\*This chart only analyzes whether convictions may fall within the primary categories of removability set forth in the Immigration and Nationality Act. Defenders should remember that it is also important to analyze whether a conviction leads to other immigration consequences, such as ineligibility for certain forms of relief from removal, Temporary Protected Status, naturalization, or Deferred Action for Childhood Arrivals. Please review the Cover Memorandum and relevant Practice Advisories on our website.\*

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commit larceny	to trespass)				of trespass and larceny
	18.2-23(B) (conspiring to commit larceny)	Probably	Probably, under 8 U.S.C. § 1101(a)(43)(U) (FN 2) and (G) <sup>3</sup>	No	
Attempt to commit capital offenses	18.2-25	Probably, if underlying offense is a CIMT	Yes, under 8 U.S.C. § 1101(a)(43)(U) if the underlying offense is an aggravated felony	Yes, if underlying offense triggers other grounds; see cover memo	

<sup>3</sup> Immigration practitioners may argue that the Virginia offense of larceny is not a categorical match for the federal generic definition of theft. As of October 2014, this issue is pending before the U.S. Court of Appeals for the Fourth Circuit. “Larceny” is a common law offense in Virginia and is defined as “the wrongful or fraudulent taking of personal goods of some intrinsic value, belonging to another, without his assent and with the intention to deprive the owner thereof permanently.” See *Slater v. Commonwealth*, 179 Va. 264, 266 (Va. 1942). Larceny therefore includes fraudulent takings, which are not theft offenses. See *Soliman v. Gonzales*, 419 F.3d 276, 282 (4<sup>th</sup> Cir. 2005). Further, a strong argument can be made under *Descamps v. United States*, 133 S. Ct. 2276 (2013), that Virginia’s larceny statutes are not “divisible,” thereby preventing the application of the modified categorical approach. Therefore, an immigration attorney could argue that conspiracy to commit larceny is indivisible and overbroad, and therefore not a conspiracy to commit an aggravated felony theft offense under (U) and (G).

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Attempt to commit noncapital felonies	18.2-26	Probably, if underlying offense is a CIMT	Yes, under 8 U.S.C. § 1101(a)(43)(U) if underlying offense is an aggravated felony	Yes, if underlying offense triggers other grounds; see cover memo	Plead to a conspiracy to commit a crime that doesn't trigger immigration consequences
Attempt to commit misdemeanors	18.2-27	Probably, if underlying offense is a CIMT	Yes, under 8 U.S.C. § 1101(a)(43)(U) if underlying offense is an aggravated felony	Yes, if underlying offense triggers other grounds; see cover memo	Plead to a conspiracy to commit a crime that doesn't trigger immigration consequences
Criminal solicitation	18.2-29 (commands, etc. another	Probably, if underlying offense is a CIMT	Probably, if underlying offense is an	Probably, if underlying offense triggers other	Plead to solicitation to commit a crime that doesn't trigger immigration

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	person to commit a felony other than murder)		aggravated felony <sup>4</sup>	grounds; see cover memo	consequences
	18.2-29 (person 18 or old who commands, etc. a person under 18 to commit a felony other than murder)	Probably	Probably, if underlying felony is an aggravated felony (FN 4)	Probably, if underlying offense triggers other grounds; see cover memo	
	18.2-29	Probably	Probably, under 8	No	

<sup>4</sup> In *Matter of Beltran*, the Board of Immigration Appeals (“BIA”) held that solicitation to possess drugs is a crime relating to a controlled substance. The Board reasoned that solicitation was similar to attempt or conspiracy. See 20 I&N Dec. 521 (BIA 1992). Therefore, solicitation to commit an underlying aggravated felony will probably be considered an aggravated felony under (U) and the corresponding aggravated felony ground.

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	(commands, etc. to commit murder)		U.S.C. § 1101(a)(43)(A) (FN 4)		

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