

CAPITAL AREA IMMIGRANTS’ RIGHTS (CAIR) COALITION
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION IX – OTHER COMMONLY CHARGED OFFENSES

(Selected Crimes against Peace and Order and Administrative of Justice and Procedural Offenses Involving Arrest and Appearance)

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
Disorderly conduct in public places	18.2-415	Probably not	No	No	Consider use as an alternative to other offenses that may trigger CIMT or other grounds of removability
Punishment for using abusive language to another	18.2-416	Probably not	No	No	Consider use as an alternative to other offenses that may trigger CIMT or other grounds of removability
Use of profane language	18.2-427	Probably not	No	No	Consider use as an alternative to other offenses that may trigger CIMT or other grounds of

¹ 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.

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.

CAPITAL AREA IMMIGRANTS' RIGHTS (CAIR) COALITION
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION IX – OTHER COMMONLY CHARGED OFFENSES

(Selected Crimes against Peace and Order and Administrative of Justice and Procedural Offenses Involving Arrest and Appearance)

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
over public airwaves					removability
Causing telephone or pager to ring with intent to annoy	18.2-429	Probably not	No	No	<p>Consider use as an alternative to other offenses that may trigger CIMT or other grounds of removability</p> <p>To preserve any potential arguments against CIMT, consider plea to sub-part 18.2-429(A) and emphasize in record that alleged conduct involved no more than that</p>

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.

CAPITAL AREA IMMIGRANTS’ RIGHTS (CAIR) COALITION
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION IX – OTHER COMMONLY CHARGED OFFENSES

(Selected Crimes against Peace and Order and Administrative of Justice and Procedural Offenses Involving Arrest and Appearance)

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
Perjury	18.2-434	Probably ²	Yes, under 8 U.S.C. § 1101(a)(43)(S) if the sentence imposed is at least one year ³	No	Specify in record that conduct related to written perjury was not pursuant to a judicial proceeding, as opposed to oral perjury during a judicial proceeding, to preserve argument in immigration court that

² The Board of Immigration Appeals has long held that perjury is a crime involving moral turpitude. *See Matter of Martinez-Recinos*, 23 I&N Dec. 175 (BIA 2001). However, the Ninth Circuit disputed this holding with respect to California’s perjury law in *Rivera v. Lynch*, 816 F.3d 1064 (9th Cir. 2015). In *Rivera*, the Ninth Circuit ruled that the California perjury statute was divisible into two separate offenses: (1) oral perjury, committed by giving false testimony under oath in a judicial proceeding, which was a CIMT, and (2) written perjury, which the Ninth Circuit found to be a “self-defining crime – whenever a document must be signed under penalty of perjury, the penalty of perjury applies.” *Id.* at 1074. For this reason, and because the California perjury statute requires no intent to defraud, the Ninth Circuit found that written perjury was not *malum in se*, and therefore not a CIMT. Similar to the California perjury statute, the Virginia perjury statute also broadly covers both oral and written perjury, and requires no intent to defraud. Therefore, an immigration attorney would have a strong argument to make along the lines of *Rivera v. Lynch* that the Virginia perjury statute is divisible, and that written perjury penalized by the statute is not a CIMT.

³ The BIA has found that the expansive “relating to...perjury” language of 8 U.S.C. § 1101(a)(43)(S) broadly encompasses both oral and written perjury, and held that the distinction between oral and written perjury drawn by the Ninth Circuit in *Rivera v. Lynch*, 816 F.3d 1064, 1072 (9th Cir. 2015) for purposes of the crime involving moral turpitude ground does not affect the aggravated felony determination. *See Matter of Alvarado*, 26 I&N Dec. 895, 902 n.12 (BIA 2016).

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.

CAPITAL AREA IMMIGRANTS’ RIGHTS (CAIR) COALITION
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION IX – OTHER COMMONLY CHARGED OFFENSES

(Selected Crimes against Peace and Order and Administrative of Justice and Procedural Offenses Involving Arrest and Appearance)

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
					offense is not a CIMT Keep sentence under one year to avoid obstruction of justice aggravated felony
Obstruction of Justice	18.2-460	Probably, but arguably not ⁴	Probably, under 8 U.S.C. § 1101(a)(43)(S) if the sentence	No	Keep sentence under one year to avoid obstruction of justice aggravated felony To preserve arguments against

⁴ An immigration court would likely find this statute to be “divisible” and look to the record of conviction to determine which subsection of the section the individual allegedly violated. Some convictions under this statute may be considered a CIMT. *See Padilla v. Gonzalez*, 397 F.3d 1016 (7th Cir. Feb. 22, 2005). However, an immigration attorney could argue that a conviction under 18.2-460(B) is overbroad with regard to the definition of a CIMT because the offense may be committed by the use of “threats” or “force.” The Board of Immigration Appeals has held that crimes that involve the use of threats or force are only CIMTs if the conduct in question is accompanied by aggravating circumstances. *See, e.g., Matter of Ajami*, 22 I&N Dec. 949 (BIA 1999). Yet, Va. Code 18.2-460 may be violated merely by making threats without an aggravating factor and regardless of whether a judicial officer is actually placed in fear or apprehension. *See, e.g., Washington v. Commonwealth*, 643 S.E.2d 485, 486 (Va. 2007). Thus, an immigration court may find that the statute is categorically overbroad with regard to the federal definition of a CIMT.

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.

CAPITAL AREA IMMIGRANTS’ RIGHTS (CAIR) COALITION
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION IX – OTHER COMMONLY CHARGED OFFENSES

(Selected Crimes against Peace and Order and Administrative of Justice and Procedural Offenses Involving Arrest and Appearance)

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
			imposed is at least one year ⁵		<p>CIMT and obstruction-of-justice aggravated felony, consider plea to sub-part 18.2-460(B) and emphasize in record that alleged conduct involved no more than that (see FNs 4 and 5)</p> <p>Consider alternate plea to 18.2-427 (use of profane language) to avoid CIMT and aggravated felony</p>

⁵ As noted above, an immigration court would likely find this statute to be divisible. The generic definition of obstruction of justice requires: (1) “active interference with proceedings of a tribunal or investigations, or action or threat of action against those who would cooperate in the process of justice;” and (2) “specific intent to interference with the process of justice.” *Matter of Valenzuela Gallardo*, 25 I&N Dec. 838, 843 (BIA 2012). However, a conviction under subsection (B) can result from empty threats that need not present any real or credible threat for those engaged in the process of justice. Additionally, subsection (B) may be committed without any specific intent or knowledge that the person he allegedly obstructs is involving in the process of justice. Accordingly, an immigration practitioner would have a strong argument that at least a portion of Va. Code 18.2-460 is overbroad with regard to the obstruction of justice aggravated felony ground.

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.

CAPITAL AREA IMMIGRANTS’ RIGHTS (CAIR) COALITION
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION IX – OTHER COMMONLY CHARGED OFFENSES

(Selected Crimes against Peace and Order and Administrative of Justice and Procedural Offenses Involving Arrest and Appearance)

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
					grounds of removability
Falsely summoning or giving false reports to law-enforcement	18.2-461	Probably ⁶	Probably, under 8 U.S.C. §1101(a)(43)(S) if the sentence imposed is at least one year ⁷ (see FN 5)	No	Consider alternate plea to 18.2-427 (use of profane language) to avoid CIMT and aggravated felony grounds of removability Keep sentence under one year to avoid obstruction of justice

⁶ An immigration practitioner would have an argument that Va. Code 18.2-460 is overbroad as the *mens rea* of Va. Code 18.2-460(ii) does not include an intent to deprive, defraud, or injure. *See United States v. Esparza-Ponce*, 193 F.3d 1133 (9th Cir. 1999); *Matter of Sanudo*, 23 I. & N. Dec. 968,971 (BIA 2006).

⁷ An immigration practitioner would have an argument that at least a portion of Va. Code 18.2-460 is overbroad with regard to the obstruction of justice aggravated felony ground. Va. Code § 18.2-461(ii) does not require “active interference with proceedings of a tribunal or investigations, or action or threat of action against those who would cooperate in the process of justice;” as required by the generic definition for obstruction of justice. *Matter of Valenzuela Gallardo*, 25 I&N Dec. 838, 843 (BIA 2012). A conviction under Va. Code 18.2-460 can result from empty threats that need not present any real or credible threat for those engaged in the process of justice. *See FN 3*.

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.

CAPITAL AREA IMMIGRANTS' RIGHTS (CAIR) COALITION
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION IX – OTHER COMMONLY CHARGED OFFENSES

(Selected Crimes against Peace and Order and Administrative of Justice and Procedural Offenses Involving Arrest and Appearance)

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
officials					aggravated felony If possible, plea to sub-part 18.2-461(ii) and emphasize in record that alleged conduct involved no more than intent to interfere to preserve a potential argument that offense does not constitute a CIMT or AF (See FN 5)
Resisting	18.2-	Possibly ⁸	No		

⁸ The government has previously charged Va. Code § 18.2-479.1 as a CIMT. However, an immigration attorney would have a strong argument that it is not. Interfering with law enforcement is analogous to assault, which is not considered to be a CIMT. Indeed, resisting arrest is a CIMT only when it results in bodily harm to the victim, or involves the threat of the use of deadly force. *See Matter of Logan, 17 I&N Dec. 367, 368-69 (BIA 1980); Matter of*

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.

CAPITAL AREA IMMIGRANTS' RIGHTS (CAIR) COALITION
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION IX – OTHER COMMONLY CHARGED OFFENSES

(Selected Crimes against Peace and Order and Administrative of Justice and Procedural Offenses Involving Arrest and Appearance)

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
arrest; fleeing from a law enforcement officer	479.1				
Giving false	19.2-	Yes ⁹	Possibly, under 8	No	If at all possible consider plea to

Danesh, 19 I&N Dec. 669 (BIA 1988); *Matter of Garcia-Lopez*, A38 096 900, 2007 WL 4699842, at *2 (BIA Nov. 2, 2007) (unpublished). Although obstruction of justice offenses that require intent to deceive or fraudulent intent may be considered CIMTs, the only intent required by Va. Code § 18.2-479.1 is the intent to "prevent[] or attempt[] to prevent a law-enforcement officer from lawfully arresting."

⁹ The Board has held other state statutes involving false identity to a police officer with intent to evade or deceive the court or a police officer are CIMTs. See *Matter of Migran Oganyan*, A72 301 718, 2004 WL 1739156 (BIA June 29, 2004) (unpublished); *Matter of Ivon Reyes Morales*, A200 897 761, 2010 WL 4971017 (BIA Nov. 23, 2010) (unpublished). However, an immigration practitioner could make an argument that Va. Code § 19.2-82.1 is not a CIMT because the *mens rea* element is somewhat ambiguous: while it is clear that an intent to deceive law enforcement regarding one's identity is required, the statute does not require a showing that the goal of the deception is to procure something of value to the detriment of another, and the element of knowing misrepresentation itself does not by itself make fraud a necessary element of a crime. See *Blanco v. Mukasaey*, 518 F.3d 714, 718 (9th Cir. 2008); *Flores-Molina v. Sessions*, _ F.3d _ No. 16-9516 (10th Cir. March 7, 2017). Furthermore, courts have held convictions for false or fraudulent

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.

CAPITAL AREA IMMIGRANTS' RIGHTS (CAIR) COALITION
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION IX – OTHER COMMONLY CHARGED OFFENSES

(Selected Crimes against Peace and Order and Administrative of Justice and Procedural Offenses Involving Arrest and Appearance)

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
identity to law-enforcement officer	82.1		U.S.C. §1101(a)(43)(S) if the sentence imposed is at least one year (see FN5) ¹⁰		18.2-415 (disorderly conduct) or 18.2-427 (use of profane language) to avoid CIMT Keep sentence under one year to avoid obstruction of justice aggravated felony

statements are not CIMTs where fraud is not an essential element and the statement is not material. *See, e.g., Matter of Di Filippo*, 10 I&N Dec. 76 (BIA 1962).

¹⁰ An immigration practitioner would have an argument that Va. Code 18.2-460 is overbroad with regard to the obstruction of justice aggravated felony ground as the offense does not involve active interference, action, or threat of action against those who would cooperate in the process of justice. *Matter of Valenzuela Gallardo*, 25 I&N Dec. 838, 843 (BIA 2012).

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.

CAPITAL AREA IMMIGRANTS’ RIGHTS (CAIR) COALITION
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION IX – OTHER COMMONLY CHARGED OFFENSES

(Selected Crimes against Peace and Order and Administrative of Justice and Procedural Offenses Involving Arrest and Appearance)

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
Failure to Appear	19.2-128	Possibly ¹¹	Yes, under 8 U.S.C. § 1101(a)(43)(Q), if conviction relates to failure to appear for service of sentence and underlying offense is punishable by a term of five years or more Yes, under 8 U.S.C. § 1101(a)(43)(T) if conviction relates to		

¹¹ Va. Code § 19.2-128 includes a *mens rea* element of “willfully” failing to appear. However, an immigration attorney would have an argument available that Va Code § 19.2-128 is not a CIMT because it does not include an intent to deprive, defraud, or injure. *See United States v. Esparza-Ponce*, 193 F.3d 1133 (9th Cir. 1999); *Matter of Sanudo*, 23 I. & N. Dec. 968,971 (BIA 2006). In addition, a comparable offense – contempt of court – has been found not to be a CIMT where the underlying offense was not a CIMT. *Matter of C-*, 9 I&N Dec. 524 (BIA 1962); *Matter of P-*, 6 I&N Dec. 400, 404 (BIA 1954); *see also Mohamed v. Holder*, 769 F.3d 885 (4th Cir. 2014) (holding the procedural offense of failure to register as a sex offender is not a CIMT because it is not *malum in se* rather than *malum prohibitum*).

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.

CAPITAL AREA IMMIGRANTS' RIGHTS (CAIR) COALITION
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION IX – OTHER COMMONLY CHARGED OFFENSES

(Selected Crimes against Peace and Order and Administrative of Justice and Procedural Offenses Involving Arrest and Appearance)

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
			failure to appear to answer to a felony charge punishable by two years or more		

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.