

CAPITAL AREA IMMIGRANTS' RIGHTS (CAIR) COALITION
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION III – PROPERTY OFFENSES

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
Arson/burning or destroying dwelling house	18.2-77	Yes	Probably, under 8 U.S.C. § 1101(a)(43)(E) ² and (F)	No	To mitigate risk of offense being considered an aggravated felony, plead in the alternative to 18.2-86, or 18.2-88 and seek sentence under one year To create possible defenses to designation of "aggravated felony" in immigration court, structure plea to Section (ii) (aiding, counseling, or procuring burning or

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.

² The aggravated felony ground at 8 U.S.C. § 1101(a)(43)(E) refers to numerous sections of the federal code criminalizing arson and other materials offenses. Many of these cross-referenced statutes include an element that involves inter-state commerce or other impact that is federal in scope. In *Torres v. Lynch*, the Supreme Court held that such elements are generally "properly ignored when determining if a state offense counts as an aggravated felony under § 1101(a)(43)." 136 S.Ct. 1619 (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.

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					destruction) rather than Section (i)
Burning/ Destroying any other building or structure	18.2-80	Yes	Probably, under 8 U.S.C. § 1101(a)(43)(E) (see FN 2); probably under (F) if sentence of one year or more imposed, and possibly under (M) if amount of loss to victim exceeds \$10,000 ³	No	To mitigate risk of offense being considered an aggravated felony, plead in the alternative to 18.2-86, or 18.2-88 and seek sentence under one year Keep sentence under one year Keep references to intent (e.g. “malicious” or “intent to defraud”) out of record to

³ An immigration practitioner would have a strong argument that this statute is overbroad and, therefore, could argue under *Descamps v. U.S.*, 133 S. Ct. 2276 (2013), that a conviction under this statute is not an aggravated felony under either the arson grounds at section 1101(a)(43)(E) or the fraud grounds at section 1101(a)(43)(M). However, an immigration court may find that the statute is “divisible,” and therefore look to the record of conviction to determine under which section of the statute the defendant was convicted. Criminal defenders should therefore review the practice tips and create an affirmative record preserving potential immigration arguments.

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					<p>preserve defense argument in immigration court</p> <p>Create affirmative record that acts did not involve intent to defraud. If impossible, create affirmative record that loss to victim was \$10,000 or less</p> <p>Create affirmative record that defendant was not engaged in actual destroying or burning of property at issue but played another role in alleged offense (e.g. “counsel or procure” the burning or destruction of property)</p> <p>If applicable, emphasize in record that no person was</p>

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					injured or was in or near the burned or destroyed property

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Burning/ Destroying personal property, standing grain, etc	18.2-81	Yes	Probably, under 8 U.S.C. § 1101(a)(43)(E) (see FN 2); probably under (F) if sentence of one year or more imposed, and possibly under (M) if amount of loss to victim exceeds \$10,000 (See FN 3)	No	To mitigate risk of offense being considered an aggravated felony, plead in the alternative to 18.2-86, or 18.2-88 and seek sentence under one year Keep sentence under one year Keep references to intent (e.g. “malicious” or “intent to defraud”) out of record to preserve defense argument in immigration court Create affirmative record that acts did not involve intent to defraud. If impossible, create affirmative record that loss

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					<p>to victim was \$10,000 or less</p> <p>Create affirmative record that defendant was not engaged in actual destroying or burning of property at issue but played another role in alleged offense (e.g. “counsel or procure” the burning or destruction of property)</p> <p>If applicable, emphasize in record that no person was injured or was in or near the burned or destroyed property</p>

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Threats to bomb or damage buildings or means of transportation; false information as to danger to such buildings, etc.; punishment; venue.	18.2-83	Yes ⁴	Yes, under 8 U.S.C. § 1101(a)(43)(E) (see FN 2)		

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Setting fire to woods, fences, grass	18.2-86	Possibly ⁵	Possibly, under 8 U.S.C. § (a)(43)(F) if sentence imposed of one year or more ⁶ and (E) (see FN 2)	No	Keep sentence under one year to avoid determination that offense is a crime of violence aggravated felony under 8 U.S.C. § 1101 (a)(43)(F)
Carelessly damaging property by fire.	18.2-88	Possibly	No	No	Create affirmative record that offense was committed “carelessly” or “negligently”

⁴ Generally an offense must involve an element of intent to constitute a CIMT, but the Board of Immigration Appeals has held that, “the intentional transmission of threats is evidence of a vicious motive or a corrupt mind,” sufficient to support a CIMT categorization. *See Matter of Ajami*, 22 I&N Dec. 949 (BIA 1999).

⁵ Although the BIA has held that arson is a CIMT, this offense is more similar to malicious destruction of property, which in some cases has been held not to constitute a CIMT. *See, e.g., Matter of N*, 8 I&N Dec. 466 (BIA 1959); *Matter of M-*, 2 I&N Dec. 686 (BIA 1946); *Matter of C-*, 2 I&N Dec. 716 (BIA 1947); *but see Matter of R-*, 5 I&N Dec. 612, 616 n.1 (BIA 1954); *Matter of M-*, 3 I&N Dec. 272, 273 (BIA 1948); *Da Silvo Neto v. Holder*, 680 F.3d 25 (1st Cir. 2012).

⁶ An immigration practitioner would have a strong argument that this offense does not constitute a crime of violence aggravated felony under 8 U.S.C. § (a)(43)(F) because use of force is not an element of the offense and there is no substantial risk that physical force will be used against the person or property of another. *See* 18 U.S.C. § 16.

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Burglary	18.2-89	Probably ⁷	Yes, under 8 U.S.C. § 1101(a)(43)(F) and (G) if sentence imposed of one year or more	No	Keep sentence under one year (including time suspended) to avoid aggravated felony Seek alternative plea to 18.2-94 to avoid aggravated felony
	18.2-89 (armed with	Probably (but possibly not) (see FN 7)	Yes, under 8 U.S.C. § 1101(a)(43)(F)	Probably (but possibly not) a firearms offense ⁸	If impossible to keep sentence under one year, seek alternative plea to

⁷ The U.S. Court of Appeal for the Fourth Circuit has held that “the act of breaking and entering a dwelling, with the intent to commit *any* crime, necessarily involves conduct that violates an individual’s reasonable expectation that her personal living and sleeping space will remain private and secure” and involves moral turpitude sufficient to be a CIMT. *Uribe v. Sessions*, 855 F.3d 622 (4th Cir. 2017), *pet for reh’g denied* Jul. 7, 2017; *see also Matter of J-G-D-F-*, 27 I&N Dec. 82 (BIA 2017). A person can be convicted under Virginia Code § 18.2-89 for breaking and entering a dwelling with intent to commit a felony or any larceny. *See Matter of Short*, 20 I&N Dec. 136, 139 (BIA 1989); *Matter of M*, 2 I&N Dec. 721 (BIA 1946). However, a person also can be convicted under the statute for breaking and entering non-dwellings such as a railroad car. *See Uribe*, 855 F.3d at 627. Therefore, an immigration attorney could argue that the statute is overbroad and not a crime involving moral turpitude.

⁸ A person is guilty of class 2 felony burglary under Virginia Code § 18.2-89 if he or she is “armed with a deadly weapon” at the time of entry. According to Virginia jury instructions, a deadly weapon is defined as “any object or instrument, not part of the human body, that is likely to cause death or great bodily injury because of the manner and under the circumstances in which it is used.” As a result, it encompasses weapons that are not included in the federal definition of firearm at 18 U.S.C. § 921(a) (which defines “firearm as “any weapon (including a starter gun) which will or is designed to or may

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	deadly weapon)		and (G) if sentence imposed of one year or more		18.2-91 or 18.2-92 and see Practice Tips section for those offenses regarding modification to the record (Note: such a plea would not necessarily avoid immigration consequences but would allow for stronger defense arguments against an aggravated felony designation in immigration court) Keep reference to firearm or any deadly weapon out of the record of conviction
Breaking and entering with	18.2-90	Yes	Probably under 8 U.S.C. §	No	Keep sentence under one year (including time

readily be converted to expel a projectile by the action of an explosive.”). An immigration attorney could therefore argue that the statute is overbroad and categorically not a firearms offense.

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intent to commit murder, rape, robbery, or arson			1101(a)(43)(F) if sentence imposed of one year or longer ⁹ No, under 8 U.S.C. § 1101(a)(43)(G) ¹⁰		suspended) to avoid aggravated felony Seek alternative plea to 18.2-94 to avoid aggravated felony If impossible to keep sentence under one year, to preserve argument that offense is not an aggravated felony, specify in the record if the offense involved entering without breaking, and/or entry into an
	18.2-90 (armed with	Yes	Yes, under 8 U.S.C. § 1101(a)(43)(F) if sentence	Probably (but possibly not) a firearms offense [See FN 6 for	

⁹ Although this offense may be considered an aggravated felony as a crime of violence, an immigration practitioner would have a strong argument that the offense is overbroad at to that aggravated felony ground. A crime of violence under 8 U.S.C. § 1101(a)(43)(F) must meet the definition under 8 U.S.C. §16 which generally requires the use or attempted use of force in the commission of an offense or a substantial risk that physical force will be used. However, an individual may be convicted under Va. Code 18.2-90 as a result of entering a building without force to commit an offense that does not necessarily require the use of force. Thus, an immigration practitioner could argue that the offense is overbroad and should not constitute a crime of violence aggravated felony. *See also* FN 6.

¹⁰ *Castendet-Lewis v. Sessions*, 855 F.3d 253 (4th Cir. 2017).

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	deadly weapon)		imposed is at least one year No, under 8 U.S.C. § 1101(a)(43)(G) (See FN10)	potential defense argument]	automobile, ship, or other non-dwelling or building; or alternatively seek to have the record simply reflect the general statutory language, omitting any reference to the manner of entry or location of entry ¹¹ To preserve a defense against a crime involving moral turpitude charge, plead to 18.2-91 rather than 18.2-90 and do not specify the offense the defendant intended to commit upon entry or specify simple assault and battery as the

¹¹ For more detailed information regarding the importance of the record of conviction and how to preserve defenses for non-citizens clients in removal proceedings, see CAIR Coalition’s July 6, 2016 Practice Advisory, “*Mathis v. United States* and the Categorical Approach: When the Record Matters,” available online at <http://www.caircoalition.org/wp-content/uploads/2016/07/20160628-Mathis-Practice-Advisory.pdf>.

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					intended offense (see FN 11 and FN 12) Keep reference to firearm or any deadly weapon out of the record of conviction
Statutory burglary	18.2-91	Probably ¹²	Possibly under 8 U.S.C. § 1101(a)(43)(F) if sentence imposed is at least one year. (see FN 6, 9)	No	Keep sentence under one year to avoid aggravated felony Seek alternative plea to 18.2-94 to avoid aggravated felony

¹²The U.S. Court of Appeal for the Fourth Circuit has held that “the act of breaking and entering a dwelling, with the intent to commit *any* crime, necessarily involves conduct that violates an individual’s reasonable expectation that her personal living and sleeping space will remain private and secure” and involves moral turpitude sufficient to be a CIMT. *Uribe v. Sessions*, 855 F.3d 622 (4th Cir. 2017), *pet for reh’g denied* Jul. 7, 2017; *see also Matter of J-G-D-F-*, 27 I&N Dec. 82 (BIA 2017). A person can be convicted under Virginia Code § 18.2-91 for breaking and entering a dwelling with intent to commit a felony or any larceny. However, a person also can be convicted under the statute for breaking and entering non-dwellings such as a railroad car. *See Uribe*, 855 F.3d at 627. Therefore, an immigration attorney could argue that the statute is overbroad and not a crime involving moral turpitude.

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			No under 8 U.S.C. § 1101(a)(43)(G) ¹³ (see FN10)		If impossible to keep sentence under one year, to preserve argument that offense is not an aggravated felony, specify in the record if the offense involved entering without breaking, and/or entry into an automobile, ship, or other non-dwelling or building; or alternatively seek to have the record simply reflect the general statutory language, omitting any reference to the manner of entry or location of entry (see FN 11) To preserve defense against a crime involving moral
	18.2-91 (armed with deadly weapon)	Probably (but possibly not) (see FN12)	Probably under 8 U.S.C. § 1101(a)(43)(F) if sentence imposed is at least one year (see FN 6, 9) Possibly, under 8 U.S.C. § 1101(a)(43)(G) if sentence is at	Probably (but possibly not) a firearms offense (see FN 8 for potential defense argument)	

¹³ The U.S. Court of Appeals for the Fourth Circuit has held that Va. Code 18.2-91 is categorically not an aggravated felony theft offense. *Castendet-Lewis v. Sessions*, 855 F.3d 253 (4th Cir. 2017).

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			least one year (See FN10)		turpitude charge, do not specify the offense the defendant intended to commit upon entry or specify simple assault and battery as the intended offense (see FN 11) Keep reference to firearm or any deadly weapon out of the record of conviction
Breaking and entering with intent to commit other misdemeanor	18.2-92	Probably (but possibly not) (see FN 12)	Probably, under 8 U.S.C. § 1101(a)(43)(F) if sentence imposed is at least one year (see FN 6, 9) No, under 8 U.S.C. § 1101(a)(43)(G)	No	Keep sentence under one year (including time suspended) to avoid aggravated felony Seek alternative plea to 18.2-94 to avoid aggravated felony

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			if sentence imposed is at least one year (see FN 10)		If applicable, create record showing that structure broken into was not a “dwelling house” to preserve argument that offense is not burglary aggravated felony; alternatively seek to have record simply reflect the general statutory language, omitting any reference to the manner of entry or location of entry (see FN 11) Keep reference to firearm or any deadly weapon out of the record of conviction
	18.2-92 (armed with deadly weapon)	Probably (but possibly not) (see FN 10)	Yes, under 8 U.S.C. § 1101(a)(43)(F) No, under 8 U.S.C. § 1101(a)(43)(G) (see FN 10)	Probably (but possibly not) a firearms offense (see FN 6 for potential defense argument)	
Possession of burglary tools	18.2-94	Probably	No	No	

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Grand larceny	18.2-95	Yes	No ¹⁴	No	Seek alternate plea to trespass, 18.2-119, to avoid CIMT; if 18.2-119 is impossible seek alternate plea to 18.2-121 unlawful entry of property
Petit larceny	18.2-96	Yes	No (see FN 14)	No	Seek alternate plea to 18.2-119 trespass to avoid CIMT; if 18.2-119 is impossible seek alternate plea to 18.2-121 unlawful entry of property

¹⁴ The Fourth Circuit held in *Omargharib v. Holder*, 775 F.d 192 (4th Cir 2014), that a conviction for grand larceny under Va. Code § 18.2-95 is categorically overbroad with regard to the aggravated felony theft offense at 8 U.S.C. 1101(a)(43)(G). Accordingly, a conviction for Virginia grand larceny cannot serve as the basis for a theft aggravated felony charge, although it can still be charged as a CIMT. A practice alert addressing *Omargharib* and its implications can be accessed here: <http://www.caircoalition.org/wp-content/uploads/2015/01/Practice-Advisory-Omargharib-Fourth-Circuit-Grand-Larceny-Decision.pdf>. The Fourth Circuit’s reasoning in *Omargharib* applies with equal weight to the definition of “larceny” for the purposes of a charge under § 18.2-96 for petit larceny.

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Identification of certain personalty	18.2-96.1(C)	Probably not ¹⁵	No	No	Emphasize the value of property in the record if under \$200 to preserve misdemeanor designation Ensure that the record does not reflect intent to deprive the owner of the use of the property
	18.2-96.1(D)	Probably (see FN 12)	Possibly (but probably not) a theft offense under 8 U.S.C. § 1101(a)(43)(G) if the sentence	No	Keep sentence under one year to avoid aggravated felony Emphasize the value of property in the record if under \$200

¹⁵ In some case the BIA has held that malicious destruction of property is not a CIMT. *Matter of N*, 8 I&N Dec. 466 (BIA 1959); *Matter of M-*, 2 I&N Dec. 686 (BIA 1946); *Matter of C-*, 2 I&N Dec. 716 (BIA 1947); *but see Matter of R-*, 5 I&N Dec. 612, 616 n.1 (BIA 1954); *Matter of M-*, 3 I&N Dec. 272, 273 (BIA 1948); *Da Silvo Neto v. Holder*, 680 F.3d 25 (1st Cir. 2012). An immigration attorney could argue that under the statute, the identification of certain personalty requires an intent to render the property unidentifiable but not to destroy the property, distinguishing the offense from even malicious destruction of property offenses that the Board has held do not rise to the level 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.

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 SECTION III – PROPERTY OFFENSES

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		Ensure that the record does not reflect knowing taking or intent to deprive the owner of the use of the property
Larceny of bank notes, checks, etc.	18.2-98	Yes	Possibly, under 8 U.S.C. § 1101(a)(43)(G) (but see FN 13)	No	Keep sentence under one year to avoid aggravated felony Seek alternate plea to 18.2-119 trespass to avoid CIMT and aggravated felony; if impossible seek alternate plea to 18.2-121 unlawful entry of property Seek alternate plea to 18.2-102, unauthorized use, to avoid CIMT and aggravated felony

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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
Unauthorized use of animal, aircraft, vehicle, or boat	18.2-102	No	No ¹⁶		Create affirmative record that defendant did not intend to deprive owner of rights or privileges of ownership
Concealing or taking possession of merchandise; altering price tags	18.2-103	Probably	Probably, under 8 U.S.C. § 1101(a)(43)(G) if sentence imposed is at least one year Probably, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim		Keep sentence under one year to avoid theft aggravated felony charge If possible, make clear in record of conviction that actual and intended loss to the victim did not exceed \$10,000 to avoid fraud aggravated felony charge under 8 U.S.C. §

¹⁶ On January 14, 2015, the Fourth Circuit decided in *Castillo v. Holder* (Case No. 14-1085) that, under the categorical approach, a conviction under Va. Code 18.2-102 cannot be charged as an aggravated felony theft offense under 8 U.S.C. 1101(a)(43)(G) because Virginia’s unauthorized use statute is categorically overbroad with regard to the theft offense aggravated felony provision.

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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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
			exceeds \$10,000 ¹⁷		1101(a)(43)(M), (U) (see FN 16) To avoid an aggravated felony, consider alternative plea to 18.2-95 grand larceny or 18.2-96 petit larceny (but note that this will not avoid the CIMT grounds of removability) (see FN 12)
Manufacture or sale of devices to shield against electronic detection of shoplifting	18.2-105.2	Probably	No	No	

¹⁷ An actual loss of \$10,000 or more is not necessary for this offense to be charged as a fraud aggravated felony because the language of the offense includes attempts and, therefore, the offense can be charged as an attempted aggravated felony under (U) if the intended loss is greater than \$10,000. *Matter of Onyido*, 22 I&N Dec. 552 (BIA 1999).

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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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
Theft or destruction of public records by others than officers	18.2-107	Yes	Possibly, under 8 U.S.C. § 1101(a)(43)(G) and (M) ¹⁸	No	Keep sentence under one year to avoid theft aggravated felony Ensure that any references to monetary amount in the record are kept under \$10,000 to avoid a fraud aggravated felony under 8 U.S.C. § 1101(a)(43)(M) Do not create affirmative record as to whether offense occurred by means of fraud or theft

¹⁸ The statute encompasses both stealing and fraud, which could give rise to the theft and fraud aggravated felony grounds (assuming all other requirements for those provisions are met). However, an immigration practitioner would likely argue that this statute is indivisible and is therefore overbroad for either aggravated felony ground because courts have made clear that fraudulent conduct and theft are distinct means of committing an aggravated felony. *Soliman v. Gonzales*, 419 F.3d 276, 282 (4th Cir. 2005); *Omargharib v. Holder*, 775 F.3d 192 (4th Cir. 2014). *See also* FN 12. However, an immigration court could find that the statute is divisible and therefore look to the record of conviction. As a result, defenders should follow the suggestions in the tips section.

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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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
Receiving stolen goods	18.2-108	Yes	Yes, under 8 U.S.C. § (a)(43)(G) if sentence imposed is at least one year	No	Keep sentence under one year
Larceny with intent to sell or distribute	18.2-108.01(A)	Yes	Probably not (see FN 13)	No	Seek alternate plea to 18.2-119 trespass to avoid CIMT and aggravated felony; if 18.2-119 is impossible seek alternate plea to 18.2-121 unlawful entry of property
	18.2-108.01(B)	Yes	Probably not (see FN 13)	No	Seek alternate plea to 18.2-102, unauthorized use, to avoid CIMT and aggravated felony Keep sentence under one year (including suspended time) to protect against theft

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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
					aggravated felony charge (but see FN 12)

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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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
Receipt of stolen firearm	18.2-108.1	Yes	Yes, under 8 U.S.C. § 1101(a)(43)(G) if sentence imposed is at least one year Yes, under 8 U.S.C. § 1101(a)(43)(E) (regardless of sentence)	Probably a firearms offense under grounds of deportability if firearm used matches the federal definition at 18 U.S.C. § 921(a) (see FN8)	Keep sentence under one year to avoid theft aggravated felony charge Seek alternate plea to 18.2-96 petit larceny with sentence of under one year to avoid aggravated felony and firearms ground of deportability Do not specify type of firearm in record to preserve argument that statute is overbroad for the purpose of firearm grounds of deportability
Receipt or transfer of possession of	18.2-109	Yes	Yes, under 8 U.S.C. § (a)(43)(G) if sentence	No	Keep sentence under one year

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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
stolen vehicle, aircraft or boat			imposed is at least one year		
Embezzlement deemed larceny	18.2-111	Yes	Possibly, under 8 U.S.C. 1101(a)(43)(G) if sentence imposed is at least one year ¹⁹ Yes, under 8 U.S.C. 1101(a)(43)(M) if loss of victim exceeds \$10,000	No	If loss to victim is alleged to be \$10,000 or greater, seek alternative plea to 18.2-95 or 18.2-96 grand or petit larceny to avoid fraud aggravated felony Make clear in record of conviction that loss to the victim was less than \$10,000; otherwise, do not emphasize loss amount in record

¹⁹ Immigration practitioners would have a strong argument that this statute is overbroad on the same grounds as Virginia’s larceny statutes. See FN 12. In *Mena v. Lynch*, No. 15-1009 (4th Cir. Apr. 27, 2016), the Fourth Circuit held that a federal embezzlement offense does not constitute a theft aggravated felony as defined at 8 U.S.C. 1101(a)(43)(G) because embezzlement involves the lawful possession of embezzled property, whereas 8 U.S.C. 1101(a)(43)(G) requires the taking of property or receipt of property without consent.

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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					<p>Keep sentence to less than one year to avoid theft aggravated felony ground</p> <p>Seek alternate plea to 18.2-119 trespass to avoid CIMT and aggravated felony; if 18.2-119 is impossible seek alternate plea to 18.2-121 unlawful entry of property</p> <p>Seek alternate plea to 18.2-102, unauthorized use, to avoid CIMT and aggravated felony</p>
Trespass after having been forbidden to do so	18.2-119	No	No	No	
Entering property of	18.2-121	Probably not	Probably not	No	

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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
another for purpose of damaging it					
Trespass on posted property (for hunting, fishing or trapping purposes)	18.2-134	No	No	No	
Injuring, etc., any property, monument, etc.	18.2-137(A)	No	No	No	If client has no prior felony convictions, seek deferred disposition pursuant to 18.2-303.2; avoid a conviction for immigration purposes by entering a plea of not guilty and do not
	18.2-137(B)	Probably	Possibly, under 8 U.S.C. § 1101(a)(43)(F) if sentence imposed is at least one year (see FN 8)	No	

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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
					<p>stipulate or admit to facts sufficient²⁰</p> <p>Keep sentence under one year</p> <p>Emphasize in record that value of property under \$1,000 to avoid felony conviction and preserve aggravated felony defenses</p>
Damaging public buildings, etc.	18.2-138 (willful)	Possibly ²¹	Possibly, under 8 U.S.C. §	No	Seek alternate plea to 18.2-119 trespass to avoid CIMT

²⁰ See CAIR Coalition Practice Advisory, “Avoiding or Withdrawing a ‘Conviction’ for Immigration Purposes,” for more information on the ways in which a first offender disposition can be structured to avoid a “conviction” for immigration purposes: <http://www.caircoalition.org/wp-content/uploads/2016/04/4.28.16-PA-Avoiding-or-Withdrawing-Conviction.pdf>.

²¹ The BIA has mixed case law on whether or not malicious destruction of property offenses are CIMTs. *Matter of N*, 8 I&N Dec. 466 (BIA 1959); *Matter of M*-, 2 I&N Dec. 686 (BIA 1946); *Matter of C*-, 2 I&N Dec. 716 (BIA 1947). The BIA, in some unpublished recent decisions, and a circuit court have held that malicious destruction of property statutes are CIMTs. See *Matter of R*-, 5 I&N Dec. 612, 616 n.1 (BIA 1954); *Matter of M*-, 3 I&N Dec. 272, 273 (BIA 1948); *Da Silvo Neto v. Holder*, 680 F.3d 25 (1st Cir. 2012). An immigration attorney could argue that under the statute, the identification of certain personalty requires an intent to render the property unidentifiable but not to destroy the property, distinguishing the offense from even malicious destruction of property offenses that the Board has held do not rise to the level 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.

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	and malicious damage to public buildings or written materials)		1101(a)(43) (F) if sentence imposed is one year or more (see FN 6)		and aggravated felony; if 18.2-119 is impossible seek alternate plea to 18.2-121 unlawful entry of property If client has no prior felony convictions, seek deferred disposition pursuant to 18.2-303.2; avoid a conviction for immigration purposes by entering a plea of not guilty and do not stipulate or admit to facts sufficient (see FN 19) Keep sentence under one year
Tampering with vehicle	18.2-146	Probably	Probably not	No	If client has no prior felony convictions, seek deferred disposition pursuant to

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					18.2-303.2; avoid a conviction for immigration purposes by entering a plea of not guilty and do not stipulate or admit to facts sufficient (see FN 19)
Entering or setting a vehicle in motion	18.2-147	Arguably not ²²	No	No	Create affirmative record that intended crime was one not involving moral turpitude (such as simple trespass) If client has no prior felony convictions, seek deferred disposition pursuant to 18.2-303.2; avoid a conviction for immigration

²² A person can be convicted under Virginia Code § 18.2-147 for entering a vehicle with the intent to commit any crime. Conduct criminalized by this statute would only constitute a CIMT if the intended crime is a crime involving moral turpitude. *See Matter of Short*, 20 I&N Dec. 136, 139 (BIA 1989); *Matter of M*, 2 I&N Dec. 721 (BIA 1946). As the statute criminalizes conduct that is not a crime involving moral turpitude, an immigration attorney could argue that the statute is overbroad and not a crime involving moral turpitude.

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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					purposes by entering a plea of not guilty and do not stipulate or admit to facts sufficient (see FN 19)
Breaking and entering railroad cars, etc.	18.2-147.1	Arguably not ²³	Probably, under 8 U.S.C. § 1101(a)(43)(F) if sentence imposed is one year or more (see FN 6) Possibly (but probably not) under 8 U.S.C. § 1101(a)(43)(G) if	No	Keep sentence under one year to avoid aggravated felony charge

²³ Virginia Code § 18.2-147.1 punishes the acts of breaking the seal or lock of any railroad car, etc. or breaking and entering any such vehicle with the intent to commit larceny or any felony therein. Simple breaking is not a crime involving moral turpitude. Breaking and entering is not a crime involving moral turpitude unless the person breaks and enters with the intent to commit a crime involving moral turpitude. See *Matter of Short*, 20 I&N Dec. 136, 139 (BIA 1989); *Matter of M*, 2 I&N Dec. 721 (BIA 1946). As the statute is overbroad, an immigration attorney could argue that a conviction under this statute is overbroad and not a crime involving moral turpitude.

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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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
			sentence imposed is one year or more ²⁴		
	18.2-147.1 (armed with firearm)	Arguably not (see FN 22)	Probably, under 8 U.S.C. § 1101(a)(43)(F) if sentence imposed of one year or more (see FN 6) Possibly (but probably not) under 8 U.S.C. § 1101(a)(43)(G) if sentence imposed of one	Probably a firearms offense under grounds of deportability if firearm used matches the federal definition at 18 U.S.C. § 921(a) (see FN 8)	Do not specify type of firearm in record to preserve argument that statute is overbroad for the purposes of 8 U.S.C. § 1101(a)(43)(E)

²⁴ To constitute a burglary aggravated felony, the elements of this statute would need to meet the elements set forth for burglary in *Taylor v. United States*, 495 U.S. 575 (1990). The elements of burglary under *Taylor* require an unlawful entry into a “building or structure.” An immigration practitioner would have a strong argument that 18.2-147.1 allows conviction for unlawful entry into vehicles that do not constitute “buildings or structures” and therefore could show that the statute is categorically overbroad.

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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
			year or more (see FN 23)		
Stealing from or tampering with parking meter, vending machine, pay telephone, etc.	18.2-152	Probably ²⁵	Probably not	No	If client has no prior felony convictions, seek deferred disposition pursuant to 18.2-303.2; avoid a conviction for immigration purposes by entering a plea of not guilty and do not stipulate or admit to facts sufficient (see FN 19) Keep sentence under one year to avoid potential determination that this offense is an aggravated

²⁵ The Board of Immigration Appeals has held that in order for a theft offense to constitute a crime involving moral turpitude it must require intent to permanently deprive *or* intent to deprive the owner of his property rights under circumstances where these rights are *substantially* eroded. See [Matter of Obeya](#), 26 I&N Dec. 856 (BIA 2016); [Matter of Diaz-Lizagarra](#), 26 I&N Dec. 847 (BIA 2016).

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					felony under 8 U.S.C. § 1101(a)(43)(F) or (G)
Computer fraud	18.2-152.3	Yes	Possibly, under 8 U.S.C. § 1101(a)(43) (G) if sentence imposed is at least one year ²⁶ Probably, under 8 U.S.C. § 1101(a)(43)(M) if loss to the victim exceeds \$10,000 ²⁷	No	If client has no prior felony convictions, seek deferred disposition pursuant to 18.2-303.2; avoid a conviction for immigration purposes by entering a plea of not guilty and do not stipulate or admit to facts sufficient (see FN 19) Keep sentence under one year to avoid theft aggravated felony charge Make clear in record of conviction that loss to the

²⁶ The same type of overbreadth arguments relevant to Virginia’s larceny offenses (see FN 14) are also potentially applicable to Va. Code 18.2-152.3.

²⁷ An immigration practitioner could argue that this statute is overbroad for the fraud aggravated felony ground under 8 U.S.C. § 1101(a)(43)(M) because the language of the statute appears to encompass both fraud and theft offenses. See FN 12.

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 SECTION III – PROPERTY OFFENSES

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
					<p>victim was less than \$10,000 to avoid fraud aggravated felony charge; otherwise, do not emphasize loss amount in record</p> <p>It is likely that an immigration court would view this as a divisible statute and would therefore review the record of conviction. Thus, in order to preserve the strongest argument against an aggravated felony designation, defenders should not create an affirmative record as to the section under which the defendant is convicted and the means of commission of the offense. If this is</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 III – PROPERTY OFFENSES

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
					impossible, defenders should plead to subsection 2 (embezzlement or larceny) and do not create affirmative record as to the means of the larceny or embezzlement
Theft of computer services	18.2-152.6	Yes	Possibly, under 8 U.S.C. § 1101(a)(43)(G) if sentence imposed is at least one year ²⁸ Possibly, under 8 U.S.C. § 1101(a)(43) (M) if loss to the	No	If client has no prior felony convictions, seek deferred disposition pursuant to 18.2-303.2; avoid a conviction for immigration purposes by entering a plea of not guilty and do not stipulate or admit to facts sufficient (see FN 19)

²⁸ An immigration practitioner would likely argue that this statute is not divisible and is overbroad because it punishes both theft and fraud offenses. See FN 13.

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 SECTION III – PROPERTY OFFENSES

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
			victim exceeds \$10,000		<p>Keep sentence under one year to avoid theft aggravated felony charge</p> <p>Make clear in record of conviction that loss to the victim was less than \$10,000 to avoid fraud aggravated felony charge; otherwise, do include a loss amount in record, if possible</p> <p>Do not specify in the record whether offense committed by means of theft or fraud (e.g. whether or not consent from alleged victim was obtained)</p>
Unlawful use of, or injury to, telephone and	18.2-164	Yes	Possibly, under 8 U.S.C. § 1101(a)(43) (F)		If client has no prior felony convictions, seek deferred disposition pursuant to

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 SECTION III – PROPERTY OFFENSES

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
telegraph lines; copying or obstructing messages; penalty			if sentence imposed is at least one year ²⁹		<p>18.2-303.2; avoid a conviction for immigration purposes by entering a plea of not guilty and do not stipulate or admit to facts sufficient (see FN 19)</p> <p>Seek alternate plea to trespass, 18.2-119, to avoid CIMT; if 18.2-119 is impossible seek alternate plea to 18.2-121 unlawful entry of property</p> <p>Keep sentence under one year to avoid aggravated felony charge</p>

²⁹ Va. Code § 18.2-164 may be charged as an aggravated felony crime of violence property offense. However, an immigration practitioner would have a strong argument available that Va. Code § 18.2-164 is not an aggravated felony “crime of violence” under 8 U.S.C. § 1101(a)(43)(F) as defined at 18 U.S.C. § 16(a) or (b) because it has no element of force. *See* FN 6.

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