

CAPITAL AREA IMMIGRANTS’ RIGHTS (CAIR) COALITION
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION VII – FRAUD OFFENSES

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
Forging public records	18.2-168	Yes	Yes, under 8 U.S.C. §1101(a)(43)(R) if convicted of forgery and sentence imposed is at least one year; arguably not under this provision if convicted of uttering rather than forgery ²	No	Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R) If impossible to keep sentence under 1 year, create affirmative record that defendant was convicted of uttering rather than

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 In *Alvarez v. Lynch*, --- F.3d ---, 2016 WL 3632613 (4th Cir. 2016), the Fourth Circuit found forgery under § 18.2-168 to constitute a categorical match to the aggravated felony forgery grounds at 8 U.S.C. § 1101(a)(43)(R). The Court explicitly noted, however, that section 18.2-168 constitutes two “separate and distinct offenses” – forging a public document and uttering said document. *Id.* at n.6. The Court did not address the question of whether *uttering* under this provision is also a match for the aggravated felony forgery grounds. In cases where the record of conviction clearly demonstrates that a conviction under section 18.2-168 relates to uttering rather than forgery, an immigration practitioner might argue that the offense is not a categorical match for the generic definition of “forgery” because it does not necessarily require a “writing” or “making” of a forged document. *See id.* at *3 (defining “forgery” as put forward in federal law as “the false making or materially altering, with intent to defraud, of any writing, which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability”) (affirming the definition put forward in *United States v. Jones*, 553 F.2d 351,

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			Yes, under 8 U.S.C. §1101(a)(43) (M) and (U) if the actual/intended loss to the victim exceeds \$10,000 ³		<p>forgery to preserve argument against forgery aggravated felony charge; if this is impossible leave record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language (see FN 2)</p> <p>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 (see FN</p>

354 (4th Cir. 1977)). Note, however, that the Immigration and Nationality Act defines any “offense relating to ... forgery” to constitute an aggravated felony pursuant to 8 U.S.C. § 1101(a)(43)(R) (emphasis added), and most courts have interpreted “relating to” to sweep in a broader category of conduct than the mere act of forgery, including uttering and the possession and use of forged documents. *See, e.g., Drakes v. Zimski*, 240 F.3d 246 (3d Cir. 2001); *Morales-Alegria v. Gonzales*, 449 F.3d 1051 (9th Cir. 2006).

³ An actual or intended loss of \$10,000 may be sufficient 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).

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 SECTION VII – FRAUD OFFENSES

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Making or having anything designed for forging writing	18.2-171	Yes	Yes, under 8 U.S.C. §1101(a)(43)(R) if convicted of forgery and sentence imposed is at least one year; arguably not under this provision if convicted of uttering rather than forgery (see FN 2) Probably, under 8 U.S.C. §1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000 (See FN 3)	No	3) Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R) If impossible to keep sentence under one year, create affirmative record that defendant was convicted of possessing rather than making the relevant object to preserve argument against forgery aggravated felony charge; if this is impossible leave record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language (see FN 2)

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 SECTION VII – FRAUD OFFENSES

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					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. § 1101(a)(43)(M), (U)
Forging, uttering, etc. other writings	18.2-172	Yes	Probably, under 8 U.S.C. §1101(a)(43)(R) if sentence imposed is one year or more (see FN 2) Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended loss to the victim exceeds \$10,000 (See FN3)	No	Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R) If impossible to keep sentence under one year, create affirmative record that defendant was convicted of uttering rather than forgery to preserve argument against forgery aggravated felony charge; if this is impossible leave record ambiguous as to means of

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 SECTION VII – FRAUD OFFENSES

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					<p>commission of offense and seek to have record reflect entire text of statutory language (see FN 2)</p> <p>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. § 1101(a)(43)(M) (U) (see FN3)</p> <p>To avoid an aggravated felony, consider alternative plea to 18.2-95 grand larceny or 18.2-96 petit larceny⁴ (but note that this will not avoid the CIMT grounds of</p>

⁴ See *Omargharib v. Holder* (Case No. 13-2229), finding that a Virginia “larceny” offense (in the context of 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) because it is defined as criminalizing theft *or* fraud offenses.

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 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION VII – FRAUD OFFENSES

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					removability)
Having in possession of forged coin or bank notes	18.2-173	Yes	Probably, under 8 U.S.C. § 1101(a)(43)(R) if sentence imposed is at least one year ⁵ Probably, under 8 U.S.C. §1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds	No	Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R) If possible, make clear in record of conviction that actual and intended loss to the victim did not exceed \$10,000 to avoid fraud

⁵ As discussed in FN 2 above, immigration practitioners might argue that uttering (or possession with intent to utter) offenses such as § 18.2-173 are not a categorical match for the forgery aggravated felony ground at 8 USC § 1101(a)(43)(R) because such offenses do not necessarily require a “writing” or “making” of a forged document. See *Alvarez v. Lynch*, --- F.3d ---, 2016 WL 3632613 (4th Cir. 2016) at * 3 (defining “forgery” as put forward in federal law as “the false making or materially altering, with intent to defraud, of any writing, which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability”) (affirming the definition put forward in *United States v. Jones*, 553 F.2d 351, 354 (4th Cir. 1977)). Note, however, that the Immigration and Nationality Act defines any “offense relating to ... forgery” to constitute an aggravated felony pursuant to 8 U.S.C. § 1101(a)(43)(R) (emphasis added), and most courts have interpreted “relating to” to sweep in a broader category of conduct than the mere act of forgery, including uttering and the possession and use of forged documents. See, e.g., *Drakes v. Zimski*, 240 F.3d 246 (3d Cir. 2001); *Morales-Alegria v. Gonzales*, 449 F.3d 1051 (9th Cir. 2006).

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 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION VII – FRAUD OFFENSES

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			\$10,000 (See FN3)		<p>aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M), (U)</p> <p>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 4)</p>

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 SECTION VII – FRAUD OFFENSES

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Impersonating officer	18.2-174	Probably ⁶	No	Probably not	
Obtaining money or signature, etc. by	18.2-178	Yes	Possibly, under 8 U.S.C. § 1101(a)(43)(R) if offense involves forgery and sentence imposed is at	No	Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R)

⁶ An immigration practitioner would have an argument that Va. Code 18.2-174 does not necessarily constitute a CIMT because the statute lacks a *mens rea* element and certainly does not explicitly 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). However, the Board of Immigration Appeals has held that that an offense may constitute a CIMT if “fraud is inherent” in the offense regardless of whether it “include[s] the usual phraseology concerning fraud...” *Matter of Flores*, 17 I&N Dec. 225, 228 (BIA 1980).

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 SECTION VII – FRAUD OFFENSES

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false pretense			<p>least one year (see FN 2)</p> <p>Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended loss to the victim exceeds \$10,000 (See FN 3)</p> <p>Possibly, under 8 U.S.C. § 1101(a)(43)(G) if sentence imposed is at least one year⁷</p>		<p>If impossible to keep sentence under one year, create affirmative record that defendant did not obtain a signature to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R); if this is impossible leave record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language (see FN 2)</p> <p>If possible, make clear in record of conviction that actual and</p>

⁷ There is a strong argument that this offense should not be categorized as a theft aggravated felony at 8 USC § 1101(a)(43)(G) because it includes consensual takings, rendering it not a categorical match to the federal theft aggravated felony ground. This argument is rooted in the holding of the Fourth Circuit Court of Appeals in *Omargharib v. Holder* (Case No. 13-2229), finding that a Virginia “larceny” offense (in the context of 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) because it is defined as criminalizing theft or fraud offenses. *See also See Soliman v. Gonzales*, 419 F.3d 276 (4th Cir.2005).

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					intended loss to the victim did not exceed \$10,000 to avoid fraud aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M), (U) 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 4)
Issuing bad checks, etc., larceny	18.2-181	Yes	Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss or potential loss to the victim exceeds \$10,000 (See FN 3) Possibly, under 8 U.S.C. §	No	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. § 1101(a)(43)(M), (U) Keep sentence under one year to

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 SECTION VII – FRAUD OFFENSES

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			1101(a)(43)(R) if sentence imposed is one year or greater (see FN 2)		<p>avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R)</p> <p>If impossible to keep record under one year, create affirmative record that defendant did not engage in false writing or forgery in order to preserve defense against forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R); if this is impossible leave record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language (see FN 2)</p> <p>Try to get conviction designated as misdemeanor and sentence of</p>

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 SECTION VII – FRAUD OFFENSES

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					6 months or less imprisonment if client would otherwise qualify for petty offense exception to grounds of inadmissibility 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 4]
Issuance of bad checks	18.2-181.1	Yes	Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended the loss or potential loss to the victim exceeds \$10,000 (See FN 3) Possibly, under 8 U.S.C. §	No	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. § 1101(a)(43)(M), (U) Keep sentence under one year to

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 SECTION VII – FRAUD OFFENSES

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			1101(a)(43)(R) if sentence imposed is one year or greater (see FN 2)		avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R) 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 4)
False Statement to obtain property or credit	18.2-186	Yes	Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended the loss or potential loss to the victim (see FN 3) Probably, under 8 U.S.C. § 1101(a)(43)(R) if sentence imposed is at	No	If possible, make clear in record of conviction that actual and intended loss to the victim did not exceed \$10,000 000 to avoid fraud aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M), (U) (see FN 3) Keep sentence under one year to

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 SECTION VII – FRAUD OFFENSES

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			least one year (see FN 2)		<p>avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R)</p> <p>If impossible to keep sentence under one year, make clear in record of conviction that defendant did not engage in actual false writing in order to preserve defense against forgery aggravated felony charge at 8 U.S.C. § 1101(a)(43)(R); if this is impossible leave record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language (see FN 2)</p> <p>To avoid an aggravated felony, consider alternative plea to 18.2-</p>

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 SECTION VII – FRAUD OFFENSES

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					95 grand larceny or 18.2-96 petit larceny (but note that this will not avoid the CIMT grounds of removability) (see FN 4)
False statements or failure to disclose material facts in order to obtain housing benefits	18.2-186.2	Yes	Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended the loss or potential loss to the victim exceeds \$10,000 Possibly under 8 U.S.C. § 1101(a)(43)(R) if sentence imposed is at least one year (see FN 2)	No	If possible, make clear in record of conviction that actual and intended loss to the victim did not exceed than \$10,000 000 to avoid fraud aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M), (U) (see FN 3) Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R) If impossible to avoid a sentence of one year, create an affirmative

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 SECTION VII – FRAUD OFFENSES

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					<p>record that conduct involved failure to disclose information rather than the creation of a false or fraudulent document, in order to preserve arguments against forgery-related aggravated felony at 8 U.S.C. § 1101(a)(43)(R); if this is impossible leave record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language (see FN 2)</p> <p>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 4]</p>

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 SECTION VII – FRAUD OFFENSES

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Identity theft	18.2-186.3(A)(1)	Yes	Probably, 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)(M) and (U) if loss to the victim exceeds \$10,000	No	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. § 1101(a)(43)(M), (U) Keep sentence under one year to avoid theft aggravated felony charge under 8 U.S.C. § 1101(a)(43)(G)
	18.2-186.3(A)(2)	Yes	Possibly, but probably not, under 8 U.S.C. § 1101(a)(43) (G) if sentence imposed is at least 1 year [see FN 5] Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds	No	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 FN4)

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 the two deferred action programs announced in November 2014 (expanded Deferred Action for Childhood Arrivals and Deferred Action for Parental Accountability). 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 VII – FRAUD OFFENSES

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
			\$10,000		
	18.2-186.3(A)(3)	Yes	Possibly, but probably not, under 8 U.S.C. §1101(a)(43) (G) if sentence imposed is at least one year (See FN7) Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000	No	
	18.2-186.3(A)(4)	Yes	Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if there are allegations of financial loss and the actual/intended loss to the victim exceeds	No	

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

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
			\$10,000		
	18.2-186.3(B)(1) *note distinct from (B1)	Yes	Probably, under 8 U.S.C. § 1101(a)(43)(G) if sentence imposed is at least one year Yes, under 8 U.S.C. § 1101(M) and (U) if the actual/intended loss to the victim exceeds \$10,000	No	
	18.2-186.3(B)(2)	Yes	Possibly, but probably not, , under 8 U.S.C. § 1101(a)(43) (G) if sentence imposed is at least one year (See FN 5) Yes, under 8 U.S.C. § 1001(a)(43)(M) and (U)	No	

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

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
			if the actual/intended loss to the victim exceeds \$10,000		
	18.2-186.3(B)(3)	Yes	Possibly, but probably not, 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)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000	No	
	18.2-186.3(B)(4)	Yes	Possibly, but probably not, under 8 U.S.C. § 1101(a)(43) (G) if sentence imposed is at	No	

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 the two deferred action programs announced in November 2014 (expanded Deferred Action for Childhood Arrivals and Deferred Action for Parental Accountability). 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 VII – FRAUD OFFENSES

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
			least one year Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if there are allegations of loss and the actual/intended loss to the victim exceeds \$10,000		
	18.2-186.3(B1)	No ⁸	Probably Not ⁹	No	
Credit	18.2-	Probably ¹⁰	Possibly, under 8 U.S.C. §	No	Keep sentence under one year to

⁸ *Nunez Vasquez v. Barr*, No. 19-1841, 2020 WL 3959159 (4th Cir. July 13, 2020). The Court held that the offense does not categorically require morally reprehensible conduct because it can be committed by misleading a private individual (rather than a government official) and does not require the perpetrator to use the information or identity of an actual person. In so holding, the Fourth Circuit rejected the Government’s argument that any offense that categorically involves fraud is a CIMT.

⁹*Id.* Need not involve fraud nor harm to the government.

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

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
card theft	192(1)(a)		1101(a)(43)(G) if the sentence imposed is more than one year ¹¹		avoid theft aggravated felony charge under 8 U.S.C. § 1101(a)(43)(G)
	18.2-192(1)(b)	Yes	Yes, under 8 U.S.C. § 1101(a)(43)(G) if the sentence imposed is more than one year [see FN 5]	No	To preserve an argument against the theft aggravated felony ground, plead to 18.2-192(1)(c) or (d) with emphasis in record

¹⁰ 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); *Matter of Grazley*, 14 I. & N. Dec. 330 (BIA 1973). Because the first section of Va. 18.2-192(1)(a) does not require any *mens rea* element, an immigration practitioner might argue that this subsection of the offense is therefore not a categorical crime involving moral turpitude.

¹¹ Immigration practitioners may argue that Virginia credit card theft does not categorically constitute a theft aggravated felony as defined at 8 U.S.C. § 1101(a)(43)(G). In order for a crime to constitute an aggravated felony theft offense, it must include a taking of property from its owner without that person’s consent and with the intent to deprive. See *Soliman v. Gonzalez*, 419 F.3d 276, 282 (4th Cir. 2005). The first section of Virginia Code § 18.2-192(1)(a), however, arguably criminalizes the taking of a credit card or credit number without any requisite intent. Moreover, an immigration practitioner might argue that the statute can be used to punish takings that are sufficiently *de minimis* so as not to constitute a “theft” for immigration purposes. See *Castillo v. Holder*, 776 F.3d 262, 267-68 (4th Cir. 2015).

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

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
	18.2-192(1)(c)	Probably [see FN 7]	Possibly, under 8 U.S.C. § 1101(a)(43)(G) if the sentence imposed is more than one year. ¹²	No	that there was no taking of property without consent. If this is impossible, plead to (1)(b) and create affirmative record that there was no taking of property without consent.
	18.2-192(1)(d)	Probably [see FN7]	Possibly, under 8 U.S.C. § 1101(a)(43)(G) if the sentence imposed is more than one year (See FN 12)	No	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 FN4] To preserve an argument against categorization as a crime

¹² In order for a crime to constitute an aggravated felony theft offense, it must include a taking of property from its owner without that person’s consent and with the intent to deprive. *See Soliman v. Gonzalez*, 419 F.3d 276, 282 (4th Cir. 2005). Virginia Code § 18.2-192(1)(c), however, does not necessarily include a taking without consent; rather, it appears to encompass a consensual purchase of property from a third party. Thus, an immigration practitioner could argue that this offense is overbroad with regard to the aggravated felony theft offense ground.

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

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
					involving moral turpitude, plead to (1)(c); if this is impossible plead to (1)(a) or (1)(d) and create an affirmative record that there was no intent to take permanently
Credit card forgery	18.2-193(1)(a)	Yes	Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000 (see FN 3) Yes, under 8 U.S.C. §1101(a)(43)(R) if convicted of forgery and sentence imposed is at least one year; arguably	No	Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R) If impossible to keep sentence under one year, create affirmative record of uttering rather than forgery to preserve defense against forgery aggravated felony charge at 8 U.S.C. §

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

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
			not under this provision if convicted of uttering rather than forgery (see FN 2)		<p>1101(a)(43)(R); if this is impossible leave record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language (see FN 2)</p> <p>If possible, make clear in record of conviction that actual and intended loss to the victim was less than \$10,000 to avoid fraud aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M), (U)</p> <p>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</p>

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

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
					removability) (see FN4)
	18.2-193(1)(b)	Yes	<p>Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended loss to the victim exceeds \$10,000 (see FN 3)</p> <p>Probably, under 8 U.S.C. § 1101(a)(43)(R) if sentence imposed is one year or more (see FN 2)</p>	No	<p>Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R)</p> <p>If possible, make clear in record of conviction that loss to the victim was less than \$10,000 to avoid fraud aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M), (U)</p> <p>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 FN4]</p>

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

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
	18.2-193(1)(c)	Yes	<p>Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000</p> <p>Yes, under 8 U.S.C. §1101(a)(43)(R) if convicted of forgery and sentence imposed is at least one year; arguably not under this provision if convicted of uttering rather than forgery</p>	No	<p>Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R)</p> <p>If impossible to keep sentence under one year, create affirmative record of uttering rather than forgery to preserve defense against forgery aggravated felony charge at 8 U.S.C. § 1101(a)(43)(R); if this is impossible leave record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language (see FN 2)</p> <p>If possible, make clear in record of conviction that actual and</p>

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

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
					intended loss to the victim was less than \$10,000 to avoid fraud aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M), (U) 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 FN4]
Credit card fraud	18.2-195(1)(a)	Yes	Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended cost to the victim exceeds \$10,000. ¹³	No	If possible, make clear in record of conviction that actual and intended loss to the victim was less than \$10,000 to avoid fraud aggravated felony charge under 8

¹³ While it is possible that the government could charge a conviction for Virginia credit card fraud as a theft aggravated felony under 8 U.S.C. § 1101(a)(43)(G), it is unlikely that such a charge would be upheld. In *Soliman v. Gonzalez*, 419 F.3d 276 (4th Cir. 2005) the Fourth Circuit held that a

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

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
	18.2-195(1)(b)	Yes	Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended cost to the victim exceeds \$10,000 [See FN 3].	No	U.S.C. § 1101(a)(43)(M), (U) If alleged actual or intended loss to the victim exceeds \$10,000, in order 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 FN4]
	18.2-195(1)(c)	Yes	Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended cost to the victim exceeds \$10,000 [See FN 3]	No	
	18.2-195(1)(d)	Yes	Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended cost to the victim exceeds	No	

conviction under Virginia Code § 18.2-195(1)(a) does not constitute a theft offense because the crime can be committed with fraudulently obtained consent, meaning that it does not have the “without consent” element required to constitute an aggravated felony theft offense. The Fourth Circuit again emphasized this distinction between fraud and theft in *Omargharib v. Holder*, 775 F.3d 192 (4th Cir. 2014).

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

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
			\$10,000 [See FN 3]		
	18.2-195(2)(a)	Yes	Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended cost to the victim exceeds \$10,000 [See FN 3]	No	
	18.2-195(2)(b)	Yes	Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended cost to the victim exceeds \$10,000[See FN 3]	No	
	18.2-195(2)(c)	Yes	Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended cost to the victim exceeds \$10,000 [See FN 3]	No	

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

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
	18.2-195(4)	Yes	Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended cost to the victim exceeds \$10,000 [See FN 3]	No	

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

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
Criminally receiving goods and	18.2-197	Yes	Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if actual/intended loss to the victim exceeds	No	Try to obtain conviction to Class 1 misdemeanor and so designated in record with sentence under 6 months if client otherwise qualifies for petty offense

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

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
services fraudulently obtained			\$10,000		<p>exception to criminal grounds of inadmissibility</p> <p>If possible, make clear in record of conviction that actual and intended loss to the victim was less than \$10,000 to avoid fraud aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M), (U)</p> <p>If alleged actual or intended loss to the victim exceeds \$10,000, in order 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 FN4]</p>

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

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
Fraudulent use of birth certificates, etc.	18.2-204.1(A)	Yes	Possibly, under 8 U.S.C. § 1101(a)(43)(R) if sentence imposed is one year or greater (see FN 2) Probably, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended the loss to the victim exceeds \$10,000 (see FN 3)	No	Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R) If impossible to keep record under one year, create affirmative record that defendant did not engage in false writing or forgery in order to preserve defense against forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R); if this is impossible leave record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language (see FN 2) Avoid plea to subsection (C) and
	18.2-204.1(B)	Yes	Possibly, under (R) if sentence imposed is one year or greater (see FN 2) Probably, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds	No	

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 the two deferred action programs announced in November 2014 (expanded Deferred Action for Childhood Arrivals and Deferred Action for Parental Accountability). 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 VII – FRAUD OFFENSES

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
			\$10,000 (see FN 3)		create affirmative record, if possible, that no firearms were involved in the offense
	18.2-204.1(C)	Yes	Possibly, under (R) if sentence imposed is one year or greater (see FN 2) Probably, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000 (see FN 3)	Probably triggers the firearms grounds of deportability at 8 U.S.C. § 1227(a)(2)(C) if firearm used matches the federal definition at 18 U.S.C. § 921(a)	If possible, make clear in record of conviction that actual and intended loss to the victim was less than \$10,000 to avoid fraud aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M), (U) (see FN 3)
Manufact	18.2-	Possibly not ¹⁴	Possibly, but probably	No	Keep sentence under one year to

¹⁴ A person can be convicted under Virginia Code § 18.2-204.2 for mere possession of a fictitious official license or identification. While the BIA has held that mere possession, even with the knowledge that the license or identification was altered but without its use or intent to use it unlawfully, is not a crime involving moral turpitude (*Matter of Serna*, 20 I&N Dec. 579 (BIA 1992)), it has found that certain offenses that inherently involve deceit such as

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 SECTION VII – FRAUD OFFENSES

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
ure, sale, etc., or possession of fictitious, facsimile or simulated official license or identifica	204.2		not, under 8 U.S. C. § 1101(a)(43)(P) if the sentence imposed is at least one year ¹⁵ Possibly, under 8 U.S.C. § 1101(a)(43)(R) if the sentence imposed is one year or greater (see FN 2)		avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R) If applicable, emphasize in record that offense involved only possession of documents; if offense involved sale, manufacture or other conduct, try to keep out of record or leave record ambiguous, to preserve arguments against forgery and

the uttering or sale of fraudulent alien registry documents knowing the documents are false are crimes involving moral turpitude, even where the statute does not include an intent to defraud as an element. *Matter of Flores*, 17 I&N Dec. 225, 230 (BIA 1980). Here, the Virginia statute is divisible into different types of conduct, but because it does not require knowledge of the documents' fictitiousness, it is arguably not a crime involving moral turpitude.

¹⁵ The elements of Virginia Code § 18.2-204.2 are not the same as the elements of 18 U.S.C. 1543 or 18 U.S.C. 1546(a), as required under the document fraud aggravated felony ground at 8 U.S.C. § 1101(a)(43)(P) because the Virginia statute does not require an intent to defraud or knowledge of the documents' fictitiousness. As the Virginia statute criminalizes conduct that does not fall under (P), an immigration attorney could argue that a conviction under this statute is categorically not an aggravated felony under (P).

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tion					document fraud aggravated felony grounds (see FN 2 and 13)
Procurin g animal, aircraft, vehicle or boat with intent to defraud	18.2-206	Yes	Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000	No	If possible, make clear in record of conviction that actual and intended loss to the victim was less than \$10,000 to avoid fraud aggravated felony charge under 8 U.S.C. § 1101(a)(43)(G) If alleged actual or intended loss to the victim exceeds \$10,000, in order 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

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					FN4]

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