

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 forgery to preserve

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 intend 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		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. ⁴ If possible, make clear in record of conviction that actual and intended loss to the victim did not exceed

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).

⁴ *See supra* fn 2 .

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					\$10,000 to avoid fraud aggravated felony charge. ⁵
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. ⁶ Probably, under 8 U.S.C. §1101(a)(43)(M) and (U) if the actual/intended	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 possessing rather than making the relevant object to preserve argument against forgery aggravated felony charge; if this is impossible leave

⁵ See supra fn 3.

⁶ See supra fn 2.

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			loss to the victim exceeds \$10,000. ⁷		record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language. ⁸ 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.	18.2-172	Yes	Probably, under 8 U.S.C. §1101(a)(43)(R) if	No	Keep sentence under one year to avoid forgery-related aggravated

⁷ See supra fn 2.

⁸ See supra fn 2.

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other writings			sentence imposed is one year or more. ⁹ Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended loss to the victim exceeds \$10,000. ¹⁰		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 commission of offense and seek to have record reflect entire text of statutory language. ¹¹ If possible, make clear in record of conviction that actual and intended

⁹ See supra fn 2.

¹⁰ See supra fn 3.

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					<p>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).¹²</p> <p>To avoid an aggravated felony, consider alternative plea to 18.2-95 grand larceny or 18.2-96 petit larceny¹³ (but note that this will not avoid the CIMT grounds of removability).</p>

¹² See *supra* fn 3.
¹³ See *supra* fn 13.

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Having in possession 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 ¹⁴ Probably, under 8 U.S.C. §1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000. ¹⁵	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 & intended loss to victim didn’t exceed \$10,000 to avoid fraud aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M), (U) To avoid aggravated felony, consider alternative plea to 18.2-95 grand larceny or 18.2-96 petit larceny ¹⁶ (but note that this will not avoid the CIMT grounds of removability)

¹⁴ 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.

¹⁵ See *supra* fn 3.

¹⁶ See *supra* fn 13.

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Impersonating officer	18.2-174	Probably ¹⁷	No	Probably not	
Obtaining money or signature, etc. by false pretense	18.2-178	Yes	Possibly, under 8 U.S.C. § 1101(a)(43)(R) if offense involves forgery and	No	Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. §

¹⁷ 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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			sentence imposed is at least one year. ¹⁸ Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended loss to the victim exceeds \$10,000. ¹⁹ Possibly, under 8 U.S.C. § 1101(a)(43)(G) if sentence imposed is at least one year ²⁰		1101(a)(43)(R) 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. ²¹

¹⁸ See supra fn 2.

¹⁹ See supra fn 3.

²⁰ 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

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					<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).</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).²²</p>

criminalizing theft or fraud offenses. *See also Soliman v. Gonzales*, 419 F.3d 276 (4th Cir.2005). Arlington IJ has affirmed *Omargharib v. Holder*, 775 F.3d 192 (4th Cir. 2014), and rejected DHS's argument that VA grand larceny 18.2-95 could constitute an aggravated felony under the AG's recent decision in *Matter of Reyes*, 28 I&N Dec. 52 (A.G. 2020).

²¹ See *supra* fn 2.

²² See *supra* fn. 13.

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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. ²³ Possibly, under 8 U.S.C. § 1101(a)(43)(R) if sentence imposed is one year or greater. ²⁴	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 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

²³ See *supra* fn 3.

²⁴ See *supra* fn 2.

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					<p>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.²⁵</p> <p>Try to get conviction designated as misdemeanor and sentence of 6 months or less imprisonment if client would otherwise qualify for petty offense exception to grounds of inadmissibility</p>

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					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) ²⁶
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. ²⁷ Possibly, under 8 U.S.C. § 1101(a)(43)(R) if	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 forgery-related aggravated

²⁶ See *supra* fn 13.

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			sentence imposed is one year or greater. ²⁸		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). ²⁹
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. ³⁰	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

²⁸ See supra fn 2.

²⁹ See supra fn 13.

³⁰ See supra fn 3.

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			Probably, under 8 U.S.C. § 1101(a)(43)(R) if sentence imposed is at least one year. ³¹		<p>U.S.C. § 1101(a)(43)(M), (U).³²</p> <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, 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</p>

³¹ See *supra* fn 2.

³² See *supra* fn 3.

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					and seek to have record reflect entire text of statutory language. ³³ 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). ³⁴
False statements or failure to disclose material facts in order to	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	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

³³ See supra fn 2.

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obtain housing benefits			<p>the victim exceeds \$10,000</p> <p>Possibly under 8 U.S.C. § 1101(a)(43)(R) if sentence imposed is at least one year.³⁵</p>		<p>aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M), (U).³⁶</p> <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 avoid a sentence of one year, create an affirmative 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</p>

³⁵ See *supra* fn 2.

³⁶ See *supra* fn 3.

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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
					leave record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language. ³⁷ 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) ³⁸
Identity theft	18.2-186.3(A)(Yes	Probably, under 8 U.S.C. § 1101(a)(43)(G) if	No	If possible, make clear in record of conviction that actual and intended

³⁷ See *supra* fn 2.

³⁸ See *supra* fn 13.

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.

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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
	1)		<p>sentence imposed is at least one year³⁹</p> <p>Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if loss to the victim exceeds \$10,000</p>		<p>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)</p> <p>Keep sentence under one year to avoid theft aggravated felony charge under 8 U.S.C. § 1101(a)(43)(G)</p>
	18.2-186.3(A)(2)	Yes	<p>Possibly, but probably not, under 8 U.S.C. § 1101(a)(43) (G) if sentence imposed is at least 1 year.⁴¹</p> <p>Yes, under 8 U.S.C. §</p>	No	<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>

³⁹ See *supra* fn 20.

****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.****

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			1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000 ⁴²		removability). ⁴⁰
	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. ⁴³ Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended	No	

⁴¹ As discussed in fn2 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 also supra* fn 20.

⁴² *See supra* fn 20.

⁴⁰ *See supra* fn 13. *See also supra* fn 20.

⁴³ *See supra* fn 20.

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.

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			loss to the victim exceeds \$10,000 ⁴⁴		
	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 \$10,000 ⁴⁵	No	
	18.2-186.3(B)	Yes	Probably, under 8 U.S.C. § 1101(a)(43)(G) if	No	

⁴⁴ See *supra* fn 20.

⁴⁵ See *supra* fn 20.

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	1) *note distinct from (B1)		sentence imposed is at least one year ⁴⁶ Yes, under 8 U.S.C. § 1101(M) and (U) if the actual/intended loss to the victim exceeds \$10,000 ⁴⁷		
	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. ⁴⁸	No	

⁴⁶ See supra fn 20.

⁴⁷ See supra fn 20.

⁴⁸ 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 also supra fn 20.

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.

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			Yes, under 8 U.S.C. § 1001(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000 ⁴⁹		
	18.2-186.3(B)(3)	Yes ⁵⁰	Possibly, but probably not, under 8 U.S.C. § 1101(a)(43)(G) if sentence imposed is at least one year ⁵¹ Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended	No	

⁴⁹ See *supra* fn 20.

⁵⁰ As of December 20, 2021, identity theft under Va. Code 18.2-186(A)(2) as a CIMT is being challenged at the Fourth Circuit. *Salazar v. Garland*, No. 21-1967 (Fourth Cir. petition filed Sep. 3, 2021).

⁵¹ See *supra* fn 20.

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			loss to the victim exceeds \$10,000 ⁵²		
	18.2-186.3(B)(4)	Yes	<p>Possibly, but probably not, under 8 U.S.C. § 1101(a)(43) (G) if sentence imposed is at least one year⁵³</p> <p>Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if there are allegations of loss and the actual/intended loss to</p>	No	

⁵² See *supra* fn 20.

⁵³ See *supra* fn 20.

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			the victim exceeds \$10,000 ⁵⁴		
	18.2-186.3(B1)	No ⁵⁵	Probably Not ⁵⁶	No	
Credit card theft	18.2-192(1)(a)	Probably ⁵⁷	Possibly, under 8 U.S.C. § 1101(a)(43)(G) if the	No	Keep sentence under one year to avoid theft aggravated felony charge

⁵⁴ See supra fn 20.

⁵⁵ In *Nunez Vasquez v. Barr*, 965 F.3d 272 (4th Cir. 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.

⁵⁶ See supra fn 55. Need not involve fraud nor harm to the government.

⁵⁷ 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. See also *Leyva Martinez v. Sessions*, 892 F.3d 655 (4th Cir. 2018)

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			sentence imposed is more than one year ⁵⁸		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. ⁶⁰	No	To preserve an argument against the theft aggravated felony ground, plead to 18.2-192(1)(c) or (d) with emphasis in record 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)(c)	Probably ⁶¹	Possibly, under 8 U.S.C. § 1101(a)(43)(G) if the sentence imposed is more than one year. ⁶²	No	

⁵⁸ 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). *See* unpublished case SBM XXX 017, reach out to <https://www.irac.net/ben/> for access. *See also supra* fn 20.

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	18.2-192(1)(d)	Probably ⁶³	Possibly, under 8 U.S.C. § 1101(a)(43)(G) if the sentence imposed is more than one year. ⁶⁴	No	<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).⁵⁹</p> <p>To preserve an argument against categorization as a crime involving moral turpitude, plead to (1)(c); if this is impossible plead to (1)(a) or</p>

⁶⁰ See supra fn 58.

⁶¹ See supra fn 20.

⁶² 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.

⁶³ See supra fn 20.

⁶⁴ See supra fn 62.

⁵⁹ See supra fn 13.

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					(1)(d) and create an affirmative record that there was no intent to take permanently
Credit card forgery	18.2-193(1)(a)	Yes	<p>Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000.⁶⁵</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</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</p>

⁶⁵ See *supra* fn 3. See also fn 20.

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.

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			if convicted of uttering rather than forgery. ⁶⁶		<p>of commission of offense and seek to have record reflect entire text of statutory language.⁶⁷</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</p>

⁶⁶ See supra fn 2.

⁶⁷ See supra fn 2.

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.

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					avoid the CIMT grounds of removability). ⁶⁸
	18.2-193(1)(b)	Yes	Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended loss to the victim exceeds \$10,000. ⁶⁹ Probably, under 8 U.S.C. § 1101(a)(43)(R) if sentence imposed is one year or more. ⁷⁰	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 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

⁶⁸ See supra fn 13.

⁶⁹ See supra fn 3. See also supra fn 20.

⁷⁰ See supra fn 2.

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					grand larceny or 18.2-96 petit larceny (but note that this will not avoid the CIMT grounds of removability). ⁷¹
	18.2-193(1)(c)	Yes	Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000 ⁷² 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	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. § 1101(a)(43)(R); if this is impossible leave record ambiguous as to means

⁷¹ See *supra* fn 13.

⁷² See *supra* fn 20.

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			if convicted of uttering rather than forgery		<p>of commission of offense and seek to have record reflect entire text of statutory language.⁷³</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</p>

⁷³ See *supra* fn 2.

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					avoid the CIMT grounds of removability). ⁷⁴
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. ⁷⁵	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)(M), (U)
	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	No	If alleged actual or intended loss to the victim exceeds \$10,000, in order to avoid an aggravated felony,

⁷⁴ See *supra* fn 13.

⁷⁵ 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 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). See also *supra* fn 20.

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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
			\$10,000 ⁷⁷		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). ⁷⁶
	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. ⁷⁸	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 \$10,000. ⁷⁹	No	
	18.2-	Yes	Yes, under 8 U.S.C. §	No	

⁷⁷See supra fn 3. See also supra fn 20.

⁷⁶See supra fn 13.

⁷⁸See supra fn 3.

⁷⁹See supra fn 3. See also supra fn 20.

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	195(2)(a)		1101(a)(43) (M) and (U) if the actual/intended cost to the victim exceeds \$10,000. ⁸⁰		
	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. ⁸¹	No	
	18.2-195(2)(c)	Yes	Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended	No	

⁸⁰ See *supra* fn 3. See also *supra* fn 20.

⁸¹ See *supra* fn 3. See also *supra* fn 20.

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			cost to the victim exceeds \$10,000. ⁸²		
	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. ⁸³	No	
Criminally receiving goods and services fraudulently obtained	18.2-197	Yes	Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if actual/intended loss to the victim exceeds \$10,000 ⁸⁴	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 exception to criminal

⁸² See supra fn 3. See also supra fn 20.

⁸³ See supra fn 3. See also supra fn 20.

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					<p>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).⁸⁵</p>

⁸⁵ See *supra* fn 13.

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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. ⁸⁶ Probably, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended the loss to the victim exceeds \$10,000. ⁸⁷	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
	18.2-204.1(B)	Yes	Possibly, under (R) if sentence imposed is one year or greater. ⁹⁰	No	

⁸⁶ See *supra* fn 2.

⁸⁷ See *supra* fn 3. See also *supra* fn 20.

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			Probably, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000. ⁹¹		have record reflect entire text of statutory language. ⁸⁸ Avoid plea to subsection (C) and 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. ⁹² Probably, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended	Probably triggers the firearms grounds of deportability at 8 U.S.C. § 1227(a)(2)(C) if	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). ⁸⁹

⁹⁰ See supra fn 2.

⁹¹ See supra fn 3. See also supra fn 20.

⁸⁸ See supra fn 2.

⁸⁹ See supra fn 3.

⁹² See supra fn 2.

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			loss to the victim exceeds \$10,000. ⁹³	firearm used matches the federal definition at 18 U.S.C. § 921(a)	
Manufacture, sale, etc., or possession of fictitious, facsimile or	18.2-204.2	Possibly not ⁹⁴	Possibly, but probably not, under 8 U.S.C. § 1101(a)(43)(P) if the sentence imposed is at least one year ⁹⁵	No	Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R) If applicable, emphasize in record

⁹³ See *supra* fn 3. See also *supra* fn 20.

⁹⁴ 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 the uttering or sale of fraudulent foreign national 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.

⁹⁵ 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

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simulated official license or identification			Possibly, under 8 U.S.C. § 1101(a)(43)(R) if the sentence imposed is one year or greater.		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 document fraud aggravated felony grounds. ⁹⁶ .
Procuring	18.2-206	Yes	Yes, under 8 U.S.C. §	No	If possible, make clear in record of

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).

⁹⁶ See *supra* fn 2. Additionally, 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 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). See also *supra* fn 20.

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animal, aircraft, vehicle or boat with intent to defraud			1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000 ⁹⁷		<p>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)</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).⁹⁸</p>

⁹⁷ See *supra* fn 20.

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