

CAPITAL AREA IMMIGRANTS’ RIGHTS (CAIR) COALITION
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION VIII – CRIMES INVOLVING MORALS AND DECENCY

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
Prostitution, commercial sexual conduct, commercial exploitation of a minor	18.2-346.01	Yes	Possibly, under 8 U.S.C. § 1101(a)(43)(K)(i) if the offense relates to “owning, controlling, managing, or supervising a prostitution business” or (K)(ii) if relating to transporting persons for the purpose of	Probably, under the prostitution and commercialized vice grounds of inadmissibility at 8 U.S.C. § 1182(2)(D) Possibly, as a crime of child abuse under 8 U.S.C. § 1227(a)(2)(E)(i) if prostitution solicited from a minor	Consider alternative pleas to 18.2-415 (disorderly conduct) or 18.2-427 (use of profane language or making obscene proposal) to avoid the CIMT, prostitution-related, and crime of child abuse -related grounds of removal To avoid sexual abuse of a minor aggravated felony, ensure that age of solicited individual is left out of the record of conviction; if crime is of solicitation, seek conviction under 18.2-346(B), not (B)(i) or (B)(ii).

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

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

CAPITAL AREA IMMIGRANTS’ RIGHTS (CAIR) COALITION
 IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
 SECTION VIII – CRIMES INVOLVING MORALS AND DECENCY

			<p>prostitution to obtain commercial advantage;</p> <p>Possibly, under “sexual abuse of a minor” grounds at U.S.C. § 1101(a)(43)(A) if convicted under 18.2-346(B)(i) or (B)(ii)</p>		
<p>Keeping, residing in, or frequenting a bawdy house</p>	<p>18.2-347</p>	<p>Yes</p>	<p>Possibly, under 8 U.S.C. § 1101(a)(43)(K)(i) if the offense relates to “owning, controlling, managing, or supervising a prostitution business” or (K)(ii) if relating</p>	<p>Probably, under the prostitution and commercialized vice grounds of inadmissibility at 8 U.S.C. § 1182(2)(D)</p> <p>Possibly, as a crime of child abuse under 8 U.S.C. § 1227(a)(2)(E)(i) if</p>	<p>Consider alternative pleas to 18.2-415 (disorderly conduct) or 18.2-427 (use of profane language or making obscene proposal) to avoid the CIMT, prostitution-related, and crime of child abuse -related grounds of removal</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 VIII – CRIMES INVOLVING MORALS AND DECENCY

			to transporting persons for the purpose of prostitution to obtain commercial advantage ²	prostitution solicited from a minor	
Aiding in Prostitution	18.2-348	Yes	Probably, under 8 U.S.C. § 1101(a)(43)(K)(i) if the offense relates to “owning, controlling, managing, or supervising a prostitution business” or (K)(ii) if relating to transporting persons for the	Probably, under the prostitution and commercialized vice grounds of inadmissibility at 8 U.S.C. § 1182(2)(D) Possibly, as a crime of child abuse under 8 U.S.C. § 1227(a)(2)(E)(i) if prostitution solicited from a minor	Consider alternative pleas to 18.2-415 (disorderly conduct) or 18.2-427 (use of profane language or making obscene proposal) to avoid the CIMT, prostitution-related, and crime of child abuse -related grounds of removal

² An immigration practitioner should challenge the aggravated felony ground of removability by arguing that “bawdy place” and “immoral purposes” are overbroad under Virginia case law. *See Hensley v. City of Norfolk*, 218 S.E.2d 735, 740 (Va. 1975)(lewdness and assignation therefore do not inherently relate to prostitution, making “bawdy place” as an element overly broad). *See also Cmmw. v. Croatan Books, Inc.*, 323 S.E.2d 86, 87–88, 90 (Va. 1984); *Warshaw v. City of Norfolk*, 58 S.E.2d 884, 885 (Va. 1950).

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 VIII – CRIMES INVOLVING MORALS AND DECENCY

			<p>purpose of prostitution to obtain commercial advantage</p> <p>Possibly, under “sexual abuse of a minor” grounds at U.S.C. § 1101(a)(43)(A) if convicted under 18.2-348 with reference to 18.2-361(B)</p>		
Trafficking or taking a person to become a prostitute	18.2-355	Yes	<p>Probably, under 8 U.S.C. § 1101(a)(43)(K)(i) if the offense relates to “owning, controlling, managing, or supervising a prostitution business” or</p>	<p>Probably, under the prostitution and commercialized vice grounds of inadmissibility at 8 U.S.C. § 1182(2)(D)</p> <p>Possibly, as a crime of child abuse under 8 U.S.C. §</p>	<p>Consider alternative pleas to 18.2-415 (disorderly conduct) or 18.2-427 (use of profane language or making obscene proposal) to avoid the CIMT, prostitution-related, and crime of child abuse -related grounds of removal</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 VIII – CRIMES INVOLVING MORALS AND DECENCY

			(K)(ii) if relating to transporting persons for the purpose of prostitution to obtain commercial advantage Possibly, under “sexual abuse of a minor” grounds at U.S.C. § 1101(a)(43)(A) if convicted under 18.2-355(3)	1227(a)(2)(E)(i) if prostitution solicited from a minor	
Receive money to place a prostitute or trafficking	18.2-356	Yes	Probably, under 8 U.S.C. § 1101(a)(43)(K)(i) if the offense relates to “owning, controlling, managing, or supervising a prostitution	Probably, under the prostitution and commercialized vice grounds of inadmissibility at 8 U.S.C. § 1182(2)(D) Possibly, as a crime of child abuse under	Consider alternative pleas to 18.2-415 (disorderly conduct) or 18.2-427 (use of profane language or making obscene proposal) to avoid the CIMT, prostitution-related, and crime of child abuse -related grounds of removal

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 VIII – CRIMES INVOLVING MORALS AND DECENCY

			<p>business” or (K)(ii) if relating to transporting persons for the purpose of prostitution to obtain commercial advantage</p> <p>Possibly, under “sexual abuse of a minor” grounds at U.S.C. § 1101(a)(43)(A) if convicted under 18.2-356(i); Yes if convicted under 18.2-356(ii)</p>	<p>8 U.S.C. § 1227(a)(2)(E)(i) if prostitution solicited from a minor</p>	
<p>Receive money from earnings of prostitute</p>	<p>18.2-357</p>	<p>Yes</p>	<p>Probably, under 8 U.S.C. § 1101(a)(43)(K)(i) if the offense relates to “owning, controlling,</p>	<p>Probably, under the prostitution and commercialized vice grounds of</p>	<p>Consider alternative pleas to 18.2-415 (disorderly conduct) or 18.2-427 (use of profane language or making obscene proposal) to avoid the CIMT, prostitution-related, and</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 VIII – CRIMES INVOLVING MORALS AND DECENCY

			managing, or supervising a prostitution business” or (K)(ii) if relating to transporting persons for the purpose of prostitution to obtain commercial advantage	inadmissibility at 8 U.S.C. § 1182(2)(D) Possibly, as a crime of child abuse under 8 U.S.C. § 1227(a)(2)(E)(i) if prostitution solicited from a minor	crime of child abuse -related grounds of removal
Commercial sex trafficking	18.2-357.1	Yes	Probably, under 8 U.S.C. § 1101(a)(43)(K)(i) if the offense relates to “owning, controlling, managing, or supervising a prostitution business” or (K)(ii) if relating to transporting	Probably, under the prostitution and commercialized vice grounds of inadmissibility at 8 U.S.C. § 1182(2)(D) Possibly, as a crime of child abuse under 8 U.S.C. § 1227(a)(2)(E)(i) if	Consider alternative pleas to 18.2-415 (disorderly conduct) or 18.2-427 (use of profane language or making obscene proposal) to avoid the CIMT, prostitution-related, and crime of child abuse grounds of removal

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 VIII – CRIMES INVOLVING MORALS AND DECENCY

			persons for the purpose of prostitution to obtain commercial advantage	prostitution solicited from a minor	
Taking indecent liberties with children	18.2-370	Yes	Yes, under the “sexual abuse of a minor” grounds at 8 U.S.C. § 1101(a)(43)(A) ³	Probably a crime of child abuse under 8 U.S.C. § 1227(a)(2)(E) ⁴	Seek alternative plea to simple assault 18.2-57; if this is not possible consider an alternative plea to 18.2-371(i) contributing to the delinquency of a minor and specify subsection (i) in the record – note that this will likely avoid the CIMT and aggravated felony grounds but

³ The Fourth Circuit Court of Appeals determined this offense to constitute a sexual abuse of a minor aggravated felony in an unpublished decision in 2008, *Waffi v. Mukasey*, 285 Fed. Appx. 26 (4th Cir. 2008). Generally, the Fourth Circuit has defined “sexual abuse of a minor” in the sentencing context as “physical or non-physical misuse or maltreatment of a minor for a purpose associated with sexual gratification.” *U.S. v. Diaz-Ibarra*, 522 F.3d 343, 352 (4th Cir. 2008); *U.S. v. Cabrera-Umanzor*, 728 F.3d 347, 352 (4th Cir. 2013).

⁴ The “crime of child abuse” ground of deportability at 8 U.S.C. § 1227(a)(2)(E)(i) has been defined broadly by the Board of Immigration Appeals, requiring the elements of a knowing mental state, coupled with an act or acts of creating a likelihood of harm to a child. *See Matter of Mendoza-Osoria*, 16 I&N Dec. 703(BIA 2016); see also *Matter of Velasquez-Herrera*, 24 I. & N. Dec. 503 (BIA 2008) (defining crime of child abuse as “any offense involving an intentional, knowing, reckless, or criminally negligent act or omission that constitutes maltreatment of a child or that impairs a child’s physical or mental well-being, including sexual abuse or exploitation.”). The question on whether Congress intended 8 U.S.C. § 1227 (a)(2)(E)(i) to apply to aliens convicted of an attempt or inchoate offense and whether a strict liability statute can satisfy the BIA’s interpretation of 8 U.S.C. § 1227(a)(2)(E)(i) is currently pending before the BIA. *See David Marquez Cruz v. Robert Wilkinson*, No. 20-1529 (4th Cir. 2021).

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 VIII – CRIMES INVOLVING MORALS AND DECENCY

					may not avoid the crime of child abuse grounds of deportability ⁵
Indecent liberties by children; penalty.	18.2-370.01	Yes	Yes, under the “sexual abuse of a minor” grounds at 8 U.S.C. § 1101(a)(43)(A) ⁶	Probably a crime of child abuse under 8 U.S.C. § 1227(a)(2)(E) ⁷	Seek alternative plea to simple assault 18.2-57; if this is not possible consider an alternative plea to 18.2-371(i) contributing to the delinquency of a minor and specify subsection (i) in the record – note that this will likely avoid the CIMT and aggravated felony grounds but may not avoid the crime of child abuse grounds of deportability
Sex offenses prohibiting proximity to children; penalty	18.2-370.2	Yes	Likely not, but the underlying sex offense will presumably qualify	Possibly, if this is the second CIMT under 8 U.S.C. § 1227(a)(2)(A)(ii). Possibly a crime against children	In the record, attempt to specify that there was no incidences of child abuse in connection with the violation of this statute

⁵ See supra note 4.

⁶ See supra note 3.

⁷ See supra note 4.

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 VIII – CRIMES INVOLVING MORALS AND DECENCY

				under 8 U.S.C. § 1227(a)(2)(E)	
Sex offenses prohibiting residing in proximity to children; penalty.	18.2-370.3	Yes	Likely not, but the underlying sex offense will presumably qualify	Possibly, if this is the second CIMT under 8 U.S.C. § 1227(a)(2)(A)(ii). Possibly a crime against children under 8 U.S.C. § 1227(a)(2)(E)	In the record, attempt to specify that there was no incidences of child abuse in connection with the violation of this statute
Sex offenses prohibiting working on school property; penalty	18.2-370.4	Yes	Likely not, but the underlying sex offense will presumably qualify	Possibly, if this is the second CIMT under 8 U.S.C. § 1227(a)(2)(A)(ii). Possibly a crime against children under 8 U.S.C. § 1227(a)(2)(E)	In the record, attempt to specify that there was no incidences of child abuse in connection with the violation of this statute
Sex offenses prohibiting entry onto school or	18.2-370.5	Yes	Likely not, but the underlying sex offense will	Possibly, if this is the second CIMT under 8 U.S.C. § 1227(a)(2)(A)(ii).	In the record, attempt to specify that there was no incidences of child

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 VIII – CRIMES INVOLVING MORALS AND DECENCY

other property; penalty			presumably qualify	Possibly a crime against children under 8 U.S.C. § 1227(a)(2)(E)	abuse in connection with the violation of this statute
Penetration of mouth of child with lascivious intent; penalty	18.2-370.6	Yes	Yes, under the “sexual abuse of a minor” grounds at 8 U.S.C. § 1101(a)(43)(A) ⁸	Probably a crime of child abuse under 8 U.S.C. § 1227(a)(2)(E) ⁹	Seek alternative plea to simple assault 18.2-57; if this is not possible consider an alternative plea to 18.2-371(i) contributing to the delinquency of a minor and specify subsection (i) in the record – note that this will likely avoid the CIMT and aggravated felony grounds but may not avoid the crime of child abuse grounds of deportability
Contributing to	18.2-371	No if convicted under	No ¹¹	Probably a crime of child abuse under 8	Plead to subsection (i) rather than (ii) and ensure that the record of

⁸ See supra note 3.

⁹ See supra note 4

¹¹ Subsection (ii) of 18.2-371 criminalizes consensual sex acts performed by a person 18 years or older with a person 15 years or older. This provision encompasses offenses colloquially referred to as “statutory rape.” Looking at a similar statutory rape statute in California, the U.S. Supreme Court found that, because the least of the acts criminalized under the statute would be consensual sex between a victim almost 18 and a perpetrator just turned 21, the statute was categorically overbroad and did not constitute a sexual abuse of a minor aggravated felony under 8 U.S.C. § 1101(a)(43)(A). *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017). In the case of subsection (ii) of 18.2-371, the least of the acts criminalized by the statute would be consensual sex between a victim of 17

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 VIII – CRIMES INVOLVING MORALS AND DECENCY

delinquency of a minor		subsection (i); possibly if convicted under subsection (ii) ¹⁰		U.S.C. 1227(a)(2)(E)(i) ¹²	conviction demonstrates as much; note that this will likely avoid the CIMT and aggravated felony grounds but may not avoid the crime of child abuse grounds of deportability ¹³
Abuse and neglect of children; penalty;	18.2-371.1(A)	Probably not ¹⁴	Possibly, under 8 U.S.C. § 1101(a)(43)(F) if sentence imposed	Yes, crime related to child abuse ground of deportability at 8 U.S.C. § 1227(a)(2)(E) ¹⁶	Seek alternative plea to simple assault 18.2-57; if this is not possible consider an alternative plea to 18.2-371(i) contributing to the delinquency of a minor, and

years of age and a perpetrator of 18 years of age. Therefore, under the logic of *Esquivel-Quintana*, 18.2-371 is categorically not a sexual abuse of a minor aggravated felony.

¹⁰ See *Prudencio v. Holder*, 669 F.3d 472 (4th Cir. 2012) (determining the first subsection to include conduct that is not turpitudinous but finding the second subsection to be categorically a CIMT, and looking to the record of conviction to determine under which subsection the respondent was convicted).

¹² See *supra* note 4.

¹³ See *supra* note 4.

¹⁴ An immigration practitioner would have a strong argument that this offense is not a CIMT because it includes omissions and negligence. Generally, offenses involving negligence, strict liability, general intent, or intent to break the law are not CIMTs. See *Matter of Ortega-Lopez*, 26 I&N Dec. 99, 100 (BIA 2013). Furthermore, in *Somikau v. Lynch*, 846 F.3d 741 (4th Cir. 2017) the Fourth Circuit held that the Virginia involuntary manslaughter statute was categorically overbroad and therefore not a CIMT when it extended to punishing conduct committed through “criminal negligence,” which is a *mens rea* lower than specific intent or recklessness and therefore insufficient for a CIMT finding. The same argument could be applied to 18.2-371.1(A).

¹⁶ See *supra* note 4.

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 VIII – CRIMES INVOLVING MORALS AND DECENCY

abandoned infant			is at least one year ¹⁵ Maybe, under 8 U.S.C. § 1101(a)(43)(A) if offense involved sexual abuse		specify subsection (i) in the record – note that this will likely avoid the CIMT and aggravated felony grounds but may not avoid the crime of child abuse grounds of deportability ¹⁷
	18.2-371.1(B)	Yes	Possibly, under 8 U.S.C. § 1101(a)(43)(F) if sentence imposed is at least one year ¹⁸	Yes, crime related to child abuse ground of deportability at 8 U.S.C. § 1227(a)(2)(E) ¹⁹	

¹⁵ 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. 1101(a)(43)(F) because the offense may be committed without the use of “force” as defined for the purposes of 18 U.S.C. § 16, for example through a refusal to act or a reckless disregard for a child’s life. Accordingly, an immigration practitioner can argue that the statute is categorically overbroad as to the crime of violence aggravated felony. Furthermore, there is an argument not yet addressed by the Fourth Circuit Court of Appeals that the risk-based element of 18 U.S.C. § 16 is unconstitutional. This is because, as three Circuit Courts of Appeals have found, *Johnson v. United States*, 135 S.Ct. 2551 (2015), a case in which the Supreme Court held the Armed Criminal Career Act (“ACCA”) residual clause – a federal statute almost identical to 18 U.S.C. § 16(b) -- is unconstitutionally void for vagueness, compels the conclusion that 18 U.S.C. § 16(b) is also unconstitutionally void for vagueness. See *United States v. Gregorio Gonzalez-Longoria*, 813 F.3d 225 (5th Cir. 2015); *United States v. Vivas-Ceja*, 808 F.3d 719 (7th Cir. 2015); *Dimaya v. Lynch*, 803 F.3d 1110 (9th Cir. 2015).

¹⁷ See *supra* note 4.
¹⁸ See *supra* note 15.
¹⁹ See *supra* note 4.

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 VIII – CRIMES INVOLVING MORALS AND DECENCY

			Maybe, under 8 U.S.C. § 1101(a)(43)(A) if offense involved sexual abuse		
Production, publication, sale, financing, etc., of child pornography	18.2-374.1	Yes	Probably, under 8 U.S.C. § 1101 (a)(43)(i) relating to child pornography ²⁰	Crime related to child abuse ground of deportability at 8 U.S.C. § 1227(a)(2)(E) ²¹ Likely also inadmissible under 8	To preserve an argument that the offense is not a sexual abuse of a minor aggravated felony, make affirmative record of no sexual abuse against child

²⁰ Arguably, this Section is not a categorical match. The relevant federal offense (18 U.S.C. § 2252) and the statute of conviction appear similar in a number of ways: they require actual depictions of a minor, the same level of mens rea, and same definition of minors. There is some overbreadth in that the scope of sexually explicit depictions in the state statute cover non-federal conduct. Unlike the definition of sexually explicit conduct in 18 U.S. Code § 2256, the legal definition of sexual conduct under the Virginia statute punishes, among other things, explicit actual or explicitly simulated acts of homosexuality (quoted term, not endorsing language). See VA Code § 18.2-390 (3) and 18 U.S. Code § 2256 (2). The Virginia definition likewise contemplates physical contact which includes an act of apparent sexual stimulation or gratification with a female breast whereas the federal definition does not. *Id.* Lastly, the Virginia definition of sexually explicit conduct punishes nudity, which includes the exposure of the buttocks and the showing of female breasts with less than a full opaque covering of a portion below the top of the nipple. VA § 18.2-390. The federal definition of sexually explicit conduct in 18 U.S.C. § 2256(2)(A), which is referenced in 18 U.S.C. § 2252, does not include depictions of buttocks or the female breasts in the way Virginia does. At least two circuits have used the overboard argument: *Salmoren v. Att’y Gen. United States*, 909 F.3d 73, 79 (3d Cir. 2018) (finding a NJ conviction of child pornography to be overbroad because it criminalized visual depictions of the inner thigh, breasts, or buttocks whereas the federal definition is limited to depictions of the anus, genitals, or pubic area of any person.); *Chavez-Solis v. Lynch*, 803 F.3d 1004, 1009 (9th Cir. 2015) (finding a California conviction for possessing child pornography is overbroad because California’s definition of depicted sexual conduct is quite broad and not restricted to specific body parts). An attorney can also argue that VA Code § 18.2 374.1 is indivisible.

²¹ See *supra* note 4.

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 VIII – CRIMES INVOLVING MORALS AND DECENCY

			Maybe, under 8 U.S.C. § 1101(a)(43)(A) if offense involved sexual abuse	U.S.C. § 1182(2)(D) (relating to prostitution and commercialized vice)	
Possession, reproduction, distribution, solicitation, and facilitation of	18.2-374.1:1	Yes	Probably, under 8 U.S.C. § 1101 (a)(43)(i) relating to child pornography ²²	Crime related to child abuse ground of deportability at 8 U.S.C. § 1227(a)(2)(E) ²³	To preserve an argument that the offense is not a sexual abuse of a minor aggravated felony, make affirmative record of no sexual abuse against child

²² There is an argument to be made that this Section is not a categorical match. The relevant federal offense (18 U.S.C. § 2252) and the statute of conviction appear similar in a number of ways: they require actual depictions of a minor, the same level of mens rea, and same definition of minors. There is some overbreadth in that the scope of sexually explicit depictions in the state statute cover non-federal conduct. Unlike the definition of sexually explicit conduct in 18 U.S. Code § 2256, the legal definition of sexual conduct under the Virginia statute punishes, among other things, explicit actual or explicitly simulated acts of homosexuality (term of art, not endorsing language). See VA Code § 18.2-390 (3) and 18 U.S. Code § 2256 (2). The Virginia definition likewise contemplates physical contact which includes an act of apparent sexual stimulation or gratification with a female breast whereas the federal definition does not. *Id.* Lastly, the Virginia definition of sexually explicit conduct punishes nudity, which includes the exposure of the buttocks and the showing of female breasts with less than a full opaque covering of a portion below the top of the nipple. VA § 18.2-390. The federal definition of sexually explicit conduct in 18 U.S.C. § 2256(2)(A), which is referenced in 18 U.S.C. § 2252, does not include depictions of buttocks or the female breasts in the way Virginia does. At least two circuits have used the overboard argument: *Salmoran v. Att’y Gen. United States*, 909 F.3d 73, 79 (3d Cir. 2018)(finding a NJ conviction of child pornography to be overbroad because it criminalized visual depictions of the inner thigh, breasts, or buttocks whereas the federal definition is limited to depictions of the anus, genitals, or pubic area of any person.); *Chavez-Solis v. Lynch*, 803 F.3d 1004, 1009 (9th Cir. 2015)(finding a California conviction for possessing child pornography is overbroad because California’s definition of depicted sexual conduct is quite broad and not restricted to specific body parts). However, VA Code § 18.2 374.1:1 is possibly indivisible.

²³ See *supra* note 4.

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 VIII – CRIMES INVOLVING MORALS AND DECENCY

child pornography			Maybe, under 8 U.S.C. § 1101(a)(43)(A) if offense involved sexual abuse	Likely also inadmissible under 8 U.S.C. § 1182(2)(D) (relating to prostitution and commercialized vice)	
Use of communications systems to facilitate certain offenses involving children	18.2-374.3	Yes	Maybe, under 8 U.S.C. § 1101(a)(43)(A) if offense involved sexual abuse ²⁴	Crime related to child abuse ground of deportability at 8 U.S.C. § 1227(a)(2)(E) ²⁵	To preserve an argument that the offense is not a sexual abuse of a minor aggravated felony, make affirmative record of no sexual abuse against child
Unlawful creation of image of another	18.2-386.1	Possibly ²⁶	Maybe, under 8 U.S.C. § 1101(a)(43)(i) relating	Possibly, under 8 U.S.C. § 1182(a)(2)(A)(i)(I)	Keep any reference of age to offended party out of the record. To preserve an argument that the offense is not a sexual abuse of a

²⁴ Unpublished case law, reach out to IRAC for copy, irac.net.

²⁵ See *supra* note 4.

²⁶ VA Code § 18.2-386.1(A)(ii) is a CIMT. VA Code § 18.2-386.1(D) could possibly be a CIMT because the intent to achieve an immoral result may be considered inherent in the willful commission of sexual crimes involving young children. See *Matter of Jimenez-Cedillo*, 27 I&N Dec. 782, 793 (BIA 2020).

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 VIII – CRIMES INVOLVING MORALS AND DECENCY

			to child pornography Maybe, under 8 U.S.C. § 1101(a)(43)(A) if offense involved sexual abuse	Maybe, under child abuse ground of deportability at 8 U.S.C. § 1227(a)(2)(E) ²⁷	minor aggravated felony, make affirmative record of no sexual abuse against child.
Indecent exposure	18.2-387	Possibly ²⁸	Maybe, under 8 U.S.C. § 1101(a)(43)(A) if offense involved sexual abuse of a minor	Crime related to child abuse ground of deportability at 8 U.S.C. § 1227(a)(2)(E) if it involved a minor	Keep any reference of age to offended party out of the record to avoid child abuse aggravated felony

²⁷ See *supra* note 4.

²⁸ In *Matter of Cortes Medina*, the BIA found that a statute punishing deliberate obscene display required an element of “lewd intent” in order to be a CIMT, meaning exposure “for purposes of sexual arousal, gratification, or affront.” 26 I&N Dec. 79, 85 (BIA 2013). According to the BIA, this requirement excludes as overbroad statutes that punish mere nudity, for example, or childish insults like mooning. Virginia’s indecent exposure statute does not, on the face of the statute, require a “lewd intent.” However, it does require an “obscene display or exposure,” and in order for something to be found “obscene” the evidence must show a related “prurient interest in sex.” See *Hart v. Commonwealth*, 441 S.E.2d 706, 709 (Va. Ct. App. 1994). An immigration practitioner could try to argue that the circumstances in which the Commonwealth has convicted people under Va. Code 18.2-387 go beyond “lewd intent,” as Virginia case law shows that there has been a successful conviction under the statute where the perpetrator purposefully exposed his G-string swim suit to an office supply store worker, even though his genitals were covered. See *Id.*

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 VIII – CRIMES INVOLVING MORALS AND DECENCY

Obscene sexual display; penalty.	18.2-387.1	Yes ²⁹	Maybe, under 8 U.S.C. § 1101(a)(43)(A) if offense involved sexual abuse of a minor		Consider alternative pleas to 18.2-415 (disorderly conduct) or 18.2-427 (use of profane language or making obscene proposal) to avoid the CIMT grounds of removal To preserve an argument that the offense is not an aggravated felony under 8 U.S.C. § 1101(a)(43)(A), make affirmative record that offense did not involve sexual abuse and that no minors were present
Profane swearing or intoxication in public	18.2-388	No	No	No	

²⁹ See *supra* note 28.

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.