CAPITAL AREA IMMIGRANTS' RIGHTS (CAIR) COALITION
IMMIGRATION CONSEQUENCES OF COMMON VIRGINIA OFFENSES
SECTION IX – OTHER COMMONLY CHARGED OFFENSES
(Selected Crimes against Peace and Order and Administrative of Justice and Procedural Offenses Involving Arrest and Appearance)

OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?[1]	COMMENTS AND PRACTICE TIPS
Accessory after the fact	18.2-19	Yes, if underlying offense is a CIMT.[2]	Yes, under U.S.C. § 1101(a)(43)(S).[3]		
Failing to secure medical	18.2-314	Probably	No	Probably a crime of child abuse under 8	Plea to simple assault and battery at 18.2-57(A) to avoid aggravated felony and CIMT; if this is not possible consider an alternative

[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] *Matter of Rivens*, 25 I&N Dec. 623, 627 n.5 (BIA Oct. 19, 2011) (federal conviction of accessory after the fact, in violation of 18 U.S.C. 3 (2000), is a crime involving moral turpitude, but only if the underlying offense is a crime involving moral turpitude).
[3] In *Pugin v. Garland*, the Fourth Circuit held Virginia accessory after the fact categorically matches the Board's generic definition of obstruction of justice. No. 20-1363, 2021 WL 5576042, at *12 (4th Cir. Nov. 30, 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.

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attention for injured child				U.S.C. § 1227(a)(2)(E)[4]	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. Note that this statute has a "Christian Science" religious exception.

[4] The "crime of child abuse" ground of deportability under 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.")

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Disorderly conduct in public places	18.2-415	Probably not	No	No	Consider use as an alternative to other offenses that may trigger CIMT or other grounds of removability
Punishment for using abusive language to another	18.2-416	Probably not	No	No	Consider use as an alternative to other offenses that may trigger CIMT or other grounds of removability
Use of profane language over public airwaves	18.2-427	Probably not	No	No	Consider use as an alternative to other offenses that may trigger CIMT or other grounds of removability

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Causing telephone or pager to ring with intent to annoy	18.2-429	Probably not	No	No	Consider use as an alternative to other offenses that may trigger CIMT or other grounds of removability To preserve any potential arguments against CIMT, consider plea to sub-part 18.2-429(A) and emphasize in record that alleged conduct involved no more than that
Perjury	18.2-434	Probably[5]	Yes, under 8 U.S.C. § 1101(a)(43)(S) if	No	Specify in record that conduct related to written perjury was not

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

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			the sentence imposed is at least one year[6]		pursuant to a judicial proceeding, as opposed to oral perjury during a judicial proceeding, to preserve argument in immigration court that offense is not a CIMT. Keep sentence under one year to avoid obstruction of justice aggravated felony
Contempt	18.2-456	No	No	No	

broadly covers both oral and written perjury, and requires no intent to defraud. Therefore, an immigration attorney would have a strong argument to make along the lines of *Rivera v. Lynch* that the Virginia perjury statute is divisible, and that written perjury penalized by the statute is not a CIMT.

[6] The generic definition of "perjury" in section 101(a)(43)(S) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(S) requires that an offender make a material false statement knowingly or willfully while under oath or affirmation where an oath is authorized or required by law. The BIA has found that the expansive "relating to…perjury" language of 8 U.S.C. § 1101(a)(43)(S) broadly encompasses both oral and written perjury, and held that the distinction between oral and written perjury drawn by the Ninth Circuit in *Rivera v. Lynch*, 816 F.3d 1064, 1072 (9th Cir. 2015) for purposes of the crime involving moral turpitude ground does not affect the aggravated felony determination. *See Matter of Alvarado*, 26 I&N Dec. 895, 902 n.12 (BIA 2016).

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Obstruction of Justice	18.2-460(A); (B); (C): (D)	Probably given that it is overboard[7] and divisible[8]	Probably, under 8 U.S.C. § 1101(a)(43)(S) if the sentence imposed is at least one year because it	No	Keep sentence under one year to avoid obstruction of justice aggravated felony To preserve arguments against CIMT and obstruction-of-justice aggravated felony, consider plea to sub-part 18.2-460(B) and

[7] An immigration practitioner would have an argument that Va. Code 18.2-460 is overbroad as the *mens rea* of Va. Code 18.2-460(ii) does not include an intent to deprive, defraud, or injure. *See United States v. Esparza-Ponce*, 193 F.3d 1133 (9th Cir. 1999); *Matter of Sanudo*, 23 I. & N. Dec. 968,971 (BIA 2006). See *Ramirez v. Sessions*, 887 F.3d 693 (4th Cir. 2018) that 18.2-460(A) is not a CIMT because it may be committed without fraud, deception, or any other aggravating element that shocks the public conscience; it also does not require any use of threats or force.

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

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			is overbroad[9] and divisible.[10]		emphasize in record that alleged conduct involved no more than that. Consider alternate plea to 18.2-427 (use of profane language) to avoid CIMT and aggravated felony grounds of removability

[9] An immigration practitioner would have an argument that at least a portion of Va. Code 18.2-460 is overbroad with regard to the obstruction of justice aggravated felony ground. A conviction under Va. Code 18.2-460 can result from empty threats that need not present any real or credible threat for those engaged in the process of justice.

[10] As noted above, an immigration court would likely find this statute to be divisible. The generic definition of obstruction of justice requires (1) an affirmative and intentional attempt (2) that is motivated by a specific intent (3) to interfere either in an investigation or proceeding that is ongoing, pending, or reasonably foreseeable by the defendant, or in another's punishment resulting from a completed proceeding. *Matter of Valenzuela Gallardo*, 27 I&N Dec. 449, 456 (BIA 2018). However, a conviction under subsection (B) can result from empty threats that need not present any real or credible threat for those engaged in the process of justice. Additionally, subsection (B) may be committed without any specific intent or knowledge that the person he allegedly obstructs is involving in the process of justice. Accordingly, an immigration practitioner would have a strong argument that at least a portion of Va. Code 18.2-460 is overbroad with regard to the obstruction of justice aggravated felony ground.

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Resisting arrest; fleeing from a law enforcement officer	18.2-460(E)	Possibly[11]	No[12]		

[11] The government has previously charged Va. Code § 18.2-479.1 as a CIMT. However, an immigration attorney would have a strong argument that it is not. Interfering with law enforcement is analogous to assault, which is not considered to be a CIMT. Indeed, resisting arrest is a CIMT only when it results in bodily harm to the victim, or involves the threat of the use of deadly force. *See Matter of Logan, 17 I&N Dec. 367, 368-69 (BIA 1980); Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988); *Matter of Garcia-Lopez*, A38 096 900, 2007 WL 4699842, at *2 (BIA Nov. 2, 2007) (unpublished). Although obstruction of justice offenses that require intent to deceive or fraudulent intent may be considered CIMTs, the only intent required by Va. Code § 18.2-479.1 is the intent to "prevent[] or attempt[] to prevent a law-enforcement officer from lawfully arresting."

[12] Since the maximum penalty for this subsection E is Class 1 misdemeanor, which under *Belcher v. Commonwealt*h, S.E.2d 2022 WL 4472825 (September 27, 2022) is not equivalent to "1 year," then this would not qualify as an aggravated felony under INA 101(a)(43)(S).

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Falsely summoning or giving false reports to law-enforcement officials	18.2-461	Probably[13]	Probably, under 8 U.S.C. §1101(a)(43)(S) if the sentence imposed is at least one year.[14]	Probably an offense relating to obstruction of justice under 8 U.S.C. §1227(a)(2)(A)(iii)	Consider alternate plea to 18.2-427 (use of profane language) to avoid CIMT and aggravated felony grounds of removability Keep sentence under one year to avoid obstruction of justice aggravated felony

[13] In *Garcia Ramirez v. Barr*, 818 Fed.Appx. 262, (Mem)–263 (4th Cir. 2020), the Fourth Circuit held in a 1 page decision, that Garcia Ramirez's Virginia conviction for providing false information to the police constituted a CIMT that rendered him ineligible for cancellation of removal. *See* 8 U.S.C. §§ 1182(a)(2)(A)(i)(I), 1229b(b)(1)(C); *In re Jurado-Delgado*, 24 I. & N. Dec. 29, 34-35 (B.I.A. 2006) (concluding that the Pennsylvania offense of unsworn falsification to authorities, which involved "mak[ing] misleading statements with an intention to disrupt the performance of a public servant's official duties[,]" was a crime involving moral turpitude). The Fourth Circuit here did not engage in any categorical approach analysis. It simply affirmed the BIA decision.

[14] *See supra* Note 6*; see also Matter of Valenzuela Gallardo*, 27 I&N Dec. 449 (BIA 2018) (interference in an ongoing or pending investigation or proceeding is not a necessary element in the definition of "offense relating to obstruction of justice" under the INA. Rather, INA § 101(a)(43)(S) involves (1) an affirmative and intentional attempt (2) that is motivated by a specific intent (3) to interfere either in an investigation or proceeding that is ongoing, pending, or reasonably foreseeable by the defendant, or in another's punishment resulting from a completed proceeding.).

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					If possible, plea to sub-part 18.2-461(ii) and emphasize in record that alleged conduct involved no more than intent to interfere to preserve a potential argument that offense does not constitute a CIMT or AF.
Escape Jail by Force (not fire)	18.2-478	Possibly	Probably under 8 U.S.C. § 1101(a)(43)(3) Obstruction of Justice grounds[15]	Probably an offense relating to obstruction of justice under 8	Consider alternate plea to assault and battery under 18.2-57, or use of profane language under 18.2-427 to avoid CIMT and aggravated felony grounds of removability

[15] Va Code § 18.2-478 does not constitute an aggravated felony with regard to obstruction of justice ground under INA § 101(a)(43)(S) as it does not necessarily include interference with ongoing proceedings of a tribunal or investigation, or specific intent to interfere with the process of justice, as required by the generic

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				U.S.C. §1227(a)(2)(A)(iii)	Keep sentence under one year to avoid obstruction of justice aggravated felony

definition for obstruction of justice. *Matter of Valenzuela Gallardo*, 25 I&N Dec, 838, 843 (BIA 2012). In *Matter of Espinoza-Gonzalez*, 22 I&N Dec. 889 (BIA 1999), BIA held that obstruction of justice crimes include either active interference with proceedings of a tribunal or investigation, or action or threat of action against those who would cooperate in the process of justice," and (2) an intent element defined as a "specific intent to interfere with the process of justice." *See Matter of Espinoza-Gonzales*, supra, at 893. Those crimes include offenses such as perjury, bribery, interference in investigation of financial transactions, jury tampering, and threatening or intimidation of witnesses. *See Matter of Espinoza-Gonzales*, supra, at 891. *See also Renteria-Morales v. Mukasey*, 551F.3d1076, 1086 (summarizing the Board's articulation of both an actus reus and mens rea element of the generic definition of obstruction-of-justice crimes). *Cf Matter of Batista-Hernandez*, 21 l&N Dec. 955 (BIA 1997). An offense under VA Code § 18.-478 is not defined by requiring interference with the proceedings of a tribunal or the official duties of a law enforcement officer, nor does conviction for the offense require proof that the accused harmed or threatened a person who would otherwise have cooperated in the process of justice. Although the crime of Escape from the Custody of a Peace Officer involves an effort to avoid lawful custody, this is insufficient to establish "obstruction of justice." *See Matter of Joseph*, 22 l&N Dec. 799, 808 (BIA 1999) (simply obstructing one's own arrest would not likely constitute an aggravated felony under section 10l(a)(43)(S) of the Act). *See also, Manuel Romero Canchola*, A044 094 053 (BIA Nov. 13, 2018) ((retaliation under Texas Penal Code 36.06(a) is not an aggravated felony because it applies to conduct not covered by chapter 73 of the federal criminal code and does not involve a specific intent to interfere in a pending , ongoing, or foreseeable investigation or proceeding); and Omar Alberto Cisneros-Ordaz, A045 124 831 (BIA May 10, 2011) (escape from custody of peace officer under New Mex. Stat. 1789 section 30-22-10 not an aggravated felony under *Matter of Espinoza-Gonzalez*, 22 I&N Dec. 889 (BIA 1999)

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					If possible, plea to sub-part 18.2-461(ii) and emphasize in record that alleged conduct involved no more than intent to interfere to preserve a potential argument that offense does not constitute a CIMT or AF.
Racketeering offenses	18.2-514	Probably	Yes, under 8 U.S.C. § 1101(a)(43)(J) if sentence imposed is at least one year Possibly, under 8 U.S.C. § 1101(a)(43)(M) and	Possibly, depending on underlying offense, for example controlled substance ground where record of conviction establishes that	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)

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			(U) if there are allegations of loss and the actual/intended loss to the victim exceeds $10,000	underlying conduct involved a controlled substance	Keep sentence under one year to avoid theft aggravated felony charge under 8 U.S.C. § 1101(a)(43)(G)
Giving false identity to law-	19.2-82.1	Yes[16]	Possibly, under 8 U.S.C. §1101(a)(43)(S) if the sentence	No	If at all possible consider plea to 18.2-415 (disorderly conduct) or

[16] The Board has held other state statutes involving false identity to a police officer with intent to evade or deceive the court or a police officer are CIMTs. *See Matter of Migran Oganyan*, A72 301 718, 2004 WL 1739156 (BIA June 29, 2004) (unpublished); *Matter of Ivon Reyes Morales*, A200 897 761, 2010 WL 4971017 (BIA Nov. 23, 2010) (unpublished). However, an immigration practitioner could make an argument that Va. Code § 19.2-82.1 is not a CIMT because the *mens rea* element is somewhat ambiguous: while it is clear that an intent to deceive law enforcement regarding one's identity is required, the statute does not require a showing that the goal of the deception is to procure something of value to the detriment of another, and the element of knowing misrepresentation itself does not by itself make fraud a necessary element of a crime. *See Blanco v. Mukasaey*, 518 F.3d 714, 718 (9th Cir. 2008); *Flores-Molina v. Sessions*, _ F.3d _, No. 16-9516 (10th Cir. March 7, 2017). Furthermore, courts have held convictions for false or fraudulent statements are not CIMTs where fraud is not an essential element and the statement is not material. *See, e.g., Matter of Di Filippo*, 10 I&N Dec. 76 (BIA 1962).

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enforcement officer			imposed is at least one year.[17]		18.2-427 (use of profane language) to avoid CIMT Keep sentence under one year to avoid obstruction of justice aggravated felony
Failure to Appear	19.2-128	Possibly[18]	Yes, under 8 U.S.C. § 1101(a)(43)(Q), if conviction relates to failure to appear for		Consider pleading under subsection 19.2-128(C). Keep the terms of imprisonment under one

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

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

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			service of sentence and underlying offense is punishable by a term of five years or more Yes, under 8 U.S.C. § 1101(a)(43)(T) if conviction relates to failure to appear to answer to a felony charge punishable by two years or more.[19]		year in order to avoid an aggravated felony conviction.

[19] In *Morales v. Sessions*, 736 Fed.Appx. 383 (4th Cir. 2018), the Fourth Circuit affirmed the BIA's determination that when the respondent pleaded guilty under Virginia law to misdemeanor driving while intoxicated (DWI) and failed to appear, his subsequent determination that his conviction under Va. Code 19.2-128(B) constituted an aggravated felony. *see also Matter of Garza-Olivares*, 26 I. & N. Dec. 736, 739 (B.I.A. 2016) (dividing the INA definition into five elements: "(1) failure to appear; (2) before a court, (3) pursuant to a court order, (4) to answer to or dispose of a charge of a felony, and (5) where the felony was one for which a sentence of 2 years' imprisonment or more may be imposed").

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Violation of Fire Code	27-100	Possibly Not[20]	Probably Not	No	This statute can be used as an alternative offense to Arson to avoid CIMT charges.

[20] Since no element of fraud or deceit and can be violated by negligence. Additionally, please note that under *Belcher v. Commonwealth*, S.E.2d 2022 WL 4472825 (September 27, 2022), Class 1 misdemeanor in VA is not equivalent to "1 year." As such, those sentenced to Class 1 misdemeanor under this statute could avail themselves of the "petty offense" exception under 212(a)(2)(A)(ii)(II).

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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?[1]	COMMENTS AND PRACTICE TIPS
Cruelty and injuries to children; abandoned infant	40.1-103	Probably[21]	Possibly, under 8 U.S.C. § 1101(a)(43)(F), if sentence of one year or more is imposed[22]	Probably a crime of child abuse under 8 U.S.C. § 1227(a)(2)(E).	Plea to simple assault and battery at 18.2-57(A) to avoid aggravated felony and CIMT; 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

[21] An immigration practitioner would have a strong argument that this offense is not a CIMT because it includes a *mens rea* of 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 *Sotnikau 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).

[22] In order to be a crime of violence under 8 U.S.C. § 1101(a)(43)(F), a conviction must necessarily meet the definition of a crime of violence at 18 U.S.C. § 16(a), including an element of the use, attempted use, or threatened use of physical force against the person or property of another. Under this statute, a person can be convicted for negligently permitting the life of a child to be endangered or health injured or to be overworked, not necessarily force. Furthermore, this statute does not require as an element the knowing or willful infliction of harm to a victim. Thus, an argument could be made that at least some convictions under this statute

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					the crime of child abuse grounds of deportability.
Possession with intent to	58.1-1017.1 -	Probably Not[23]	Probably Not since Tobacco is not a	No	If possible, make clear in record of conviction that actual and intended

do not constitute crimes of violence. Note the Supreme Court held 18 U.S.C. § 16(b) is unconstitutionally void for vagueness. *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018). However, in *Allman v. Holder*, 417 Fed.Appx. 373, 374, 2011 WL 933769, at *1 (4th Cir. 2011), the Fourth Circuit held that Allman's conviction under Va.Code Ann. § 40.1–103 (Michie 2002 & Supp.2010) amounted to a "crime of violence" and was therefore an aggravated felony. *See* 8 U.S.C. § 1101(a)(43)(F) (2006). However, the Court did not engage in any robust analysis employing a categorical approach.

[23] An Immigration Practitioner would have a strong argument that this is not a CIMT. BIA analyzed a similar NY statute in an unpublished decision, In Re: Khader Awawdeh A.k.a. Awawda Khader, 2006 WL 2008299, at *2 (BIA 2006). The statute was NY TAX § 1814(d) (West 1999). BIA held that the statute did require

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distribute tax-paid cigarettes			controlled substance. But probably YES under 8 U.S.C. § 1101(a)(43)(M) if it is it held that it includes elements of fraud or deceit and there are allegations of loss and the actual/intended loss		loss to the victim did not exceed $10,000 to avoid fraud aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M). And if possible, also plead this as a regulatory civil violation and a fine, rather than a criminal charge.

"*no* willful act, and *no* intent to deceive" and this is rather a regulatory matter, and "does not carry with it the inherent or implicit element that fraud is involved," and thus, it is NOT a CIMT. *Id.* Similarly, in *In Re: Hamid Choudhry A.k.a. Muhammad Hamid A.k.a. Hamit Choudhry*, 2013 WL 4925079, at *2 (BIA 2013), the respondent pled guilty to a conspiracy to Sell Contraband Cigarettes under 18 U.S.C. § 2342(a) which states that "[i]t shall be unlawful for any person knowingly to ship, transport, receive, possess, sell, distribute, or purchase contraband cigarettes or contraband smokeless tobacco." BIA held that neither fraud or deceit is an element of the offense, and that 18 U.S.C. §2342(a) does not come within the definition of "moral turpitude" because it is a regulatory statute designed to regulate the taxes, licensing and administrative requirements for commercial distributers of cigarettes. Id at*3, citing *Matter of G-*, 7 I&N Dec. 114, 115, 118 (BIA 1956) (holding that a conviction for the "possession and transportation of distilled spirits without tax stamps affixed thereto" in violation of "licensing and regulating provisions of the Internal Revenue Code" was not a CIMT because the "violation of statutes which merely license or regulate and impose criminal liability without regard to evil intent do not involve moral turpitude.").

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			to the victim exceeds $10,000.		
Trademark Infringement	59.1-92.12	Possibly[24]	Possibly, 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 Possibly a theft offense under 8 U.S.C. § 1101(a)(43)(G) 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 theft aggravated felony charge under 8 U.S.C. § 1101(a)(43)(G)

[24] An immigration practitioner would have a strong argument that this offense is not a CIMT because it lacks an element of intent. 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); *Sotnikau v. Lynch*, 846 F.3d 741 (4th Cir. 2017).

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			the sentence imposed is at least one year[25]		
Underage possession of alcohol	4.1-305	No	No	No, but potentially "habitual drunkard" grounds for inadmissibility under 212 (generally relevant for Cancellation of Removal or Adjustment of status cases)	To preserve any potential arguments against CIMT, consider plea to sub-part 4.1-305(A); completely dismiss, if possible; or seek deferred disposition under subsection (F). *See* Practice Advisory on Deferred Disposition here, https://www.caircoalition.org/sites/default/files/blog/2016/04/4.28

[25] The Fourth Circuit held in *Omargharib v. Holder*, 775 F.d 192 (4th Cir 2014), that a conviction for grand larceny under Va. Code § 18.2-95 is categorically overbroad with regard to the aggravated felony theft offense at 8 U.S.C. 1101(a)(43)(G) because it punishes takings with and without consent. The Fourth Circuit's reasoning in *Omargharib* may apply to this statute.

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					.16-PA-Avoiding-or-Withdrawing-Conviction.pdf

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