OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?[1]	COMMENTS AND PRACTICE TIPS
Maiming, etc., of another resulting from driving while intoxicated	18.2-51.4	Probably not[2]	No[3]	Possibly considered a controlled substance offense if person is intoxicated by a federally prohibited	If driving under the influence of controlled substance(s), keep reference to particular controlled substance(s) out of record of conviction

[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 *Sotnikau v. Lynch*, No. 15-2073, 2017 WL 2709572 (4th Cir. Jan. 24, 2017) the Fourth Circuit held that Virginia involuntary manslaughter is categorically overbroad and therefore not a CIMT because it extends 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. A conviction for maiming caused by DUI can also be supported by a *mens rea* of criminal negligence and therefore there are strong arguments that it is not categorically a CIMT by this logic. The Fourth Circuit distinguished the VA involuntary manslaughter statute from the Missouri statute examined by the BIA in *Matter of Franklin*, 20 I&N Dec. 867 (BIA 1994). In *Matter of Franklin*, the BIA held that the Missouri involuntary manslaughter statute involved moral turpitude because it punished only the reckless causation of death. *See* 20 I&N Dec. 867 (BIA 1994). By contrast, the Virginia definition of involuntary manslaughter is founded in common law and includes a "reckless" **or** "indifferent disregard" standard, which does not require a conscious disregard of known risks.

[3] *See Bejarano-Urrutia v. Gonzales*, 413 F.3d 444 (4th Cir. 2005). In *Bejarano-Gonzales*, the Fourth Circuit held that involuntary manslaughter is not a crime of violence aggravated felony under the reasoning in *Leocal v. Ashcroft*, 543 U.S. 1 (2004) despite the fact that involuntary manslaughter requires reckless disregard for human life. Va. Code 18.2-51.4 contains a *mens rea* of recklessness similar to that required for an involuntary manslaughter conviction and, therefore, under *Bejarano-Urrutia* would not be considered an aggravated felony crime of violence.

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				controlled substance and established in record of conviction[4]	
Driving motor vehicle, engine, etc., while intoxicated, etc. (simple DUI)	18.2-266[5]	No	No	Possibly considered a controlled substance offense if person is intoxicated by a federally prohibited controlled substance	Note that any DUI greatly increases the risk that ICE will take enforcement action against an undocumented person If driving under the influence of controlled substance(s), keep reference to particular

[4] Virginia Code § 18.2-51.4 prohibits a person from driving while intoxicated in violation of Virginia Code § 18.2-266, which includes driving while such person is under the influence of alcohol or while such person is under the influence of any narcotic drug, among other offenses. As the statute can be violated by driving while under the influence of alcohol, an immigration attorney may argue that the statute is overbroad and therefore categorically not a crime related to a controlled substance.

[5] Multiple DUI convictions gives rise to a presumption against "Good Moral Character" under INA § 101(f) 8 U.S.C. § 1101(f); *Matter of Castillo-Perez*, 27 I. & N. Dec. 664, 669 (BIA 2019).

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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				and established in record of conviction[6]	controlled substance(s) out of record of conviction
Driving a commercial motor vehicle while intoxicated, etc.	46.2-341.24	No	No	Possibly considered a controlled substance offense if person is intoxicated by a federally prohibited controlled substance and established in record of conviction[7]	Note that any DUI greatly increases the risk that ICE will take enforcement action against an undocumented person If driving under the influence of controlled substance(s), keep reference to particular

[6] Please note that a person who has been convicted of multiple DUI convictions with a total sentence imposed of 5 years or more may be inadmissible under INA § 202(a)(2)(B); or health related grounds under INA § 212(a)(1)(A)(iii)(I) (stating a person who suffers from a physical or mental disorder, including alcoholism, that poses a current threat to self or others is inadmissible).

[7] *See supra* note 4.

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					controlled substance(s) out of record of conviction
Refusal of tests	18.2-268.3	No	No	No	
Subsequent offense DUI	18.2-270[8]	No	No	Possibly considered a controlled substance offense if person is intoxicated by a federally prohibited controlled substance and established in record of conviction.	Note that any DUI greatly increases the risk that ICE will take enforcement action against an undocumented person If driving under the influence of controlled substance(s), keep reference to particular controlled substance(s) out of record of conviction

[8] Multiple DUI convictions gives rise to a presumption against "Good Moral Character" under INA § 101(f) 8 U.S.C. § 1101(f); *Matter of Castillo-Perez*, 27 I. & N. Dec. 664, 669 (BIA 2019).

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Driving after forfeiture of license	18.2-272	No	No	No	
Driving without a license	46.2-300	No	No	No	
Drinking while driving; possession of open container while operating a motor vehicle	18.2-323.1	No	No	No[9]	Note any DUI greatly increases the risk that ICE will take enforcement action against an undocumented person
	46.2-357(B)(1)	No	No	No	Note that any DUI greatly increases the risk that ICE

[9] *See Supra* note 5.

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Driving while habitual offender **Please note that §§ 46.2-355.1 to 46.2-363. Repealed by Acts 2021, Sp. S. I, c. 463, eff. July 1, 2021.**	46.2-357(B)(2)	Possibly, but only if person was driving under the influence in the course of the offense (§§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24 offenses), and the record of conviction establishes that[10]	No	Possibly considered a controlled substance offense if person is intoxicated by a federally prohibited controlled substance and established in record of conviction[11]	will take enforcement action against an undocumented person If driving under the influence of controlled substance(s), keep reference to particular controlled substance(s) out of record of conviction; for (B)(2) convictions that involve violations of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24, keep out

[10] In *In re Lopez-Meza*, 22 I. & N. Dec. 1188, 1996 (1999), the BIA found that an Arizona aggravated DUI offense constituted a CIMT based on the reasoning that "a person who drives while under the influence, knowing that he or she is absolutely prohibited from driving, commits a crime so base and so contrary to the currently accepted duties that persons owe to one another and to society in general that it involves moral turpitude." Because this offense appears to be divisible, those who are also committing DUI offenses in the course of this offense (and established in the record) would fall within this category and their convictions would be CIMTs. Those whose driving endangers the life, limb, or property of another but are *not* also committing DUI offenses would not have CIMT offenses.

[11] *See supra* note 4.

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					reference to those offenses in record of conviction
Disregarding signal by law-enforcement	46.2-817(A)	Yes[12]	No.[13]	No	Consider alternative plea to reckless driving to avoid CIMT or aggravated felony
	46.2-817(B)	Yes.[14]	Possibly, but probably not	No	

[12] Since a punishment for Class 2 misdemeanor is up to 6 months, a person with a single conviction under 46.2-817(A) may possibly avail to a petty offense exception under 212(a)(2)(A)(ii)(II). The Fourth Circuit recently held in *Granados v. Garland*, 17 F.4th 475, 481–82 (4th Cir. 2021) that 46.2-817(B) constitutes a CIMT. The Court argued that "Wanton" in VA means "manifesting arrogant recklessness." *Forbes v. Commonwealth*, 27 Va.App. 304, 498 S.E.2d 457, 459 (1998). Because the phrase "willful and wanton" imparts a *mens rea* of at least recklessness, it is sufficient to meet the CIMT culpability prong. *See Nunez-Vasquez*, 965 F.3d at 282–83 (determining that a statute could not qualify as a CIMT since it only required criminal negligence, rather than purpose or recklessness).The Court further stated that "a violation of Virginia felony eluding requires willful and wanton disregard of a law enforcement signal and willful and wanton interference or endangerment. Because both aspects require a sufficiently culpable *mens rea*, and flight carries with it an intrinsic element of risk and danger (citing *United States v. Hudson*, 673 F.3d 263, 268 (4th Cir. 2012), both mens rea and actus rea elements for CIMT are met and there can be no doubt Virginia felony eluding is a CIMT. *Id.* Interestingly, the Third Circuit analyzed the PA eluding statute 75 Pa. Cons. Stat. § 3733(a.2)(2) in *Rosario-Ovando v. AG*, 2022 WL 2205257, at *10 (3rd Cir. 2022) and concluded that the least culpable conduct criminalized by the three aggravating elements of Pennsylvania's felony fleeing or eluding statute is not a CIMT.

[13] Class 2 misdemeanor with maximum possible sentence of 6 months.

[14] The Fourth Circuit recently held in *Granados v. Garland*, 17 F.4th 475, 481–82 (4th Cir. 2021) that 46.2-817(B) constitutes a CIMT. The Court argued that "Wanton" in VA means "manifesting arrogant recklessness." *Forbes v. Commonwealth*, 27 Va.App. 304, 498 S.E.2d 457, 459 (1998). Because the phrase "willful and wanton" imparts a *mens rea* of at least recklessness, it is sufficient to meet the CIMT culpability prong. *See Nunez-Vasquez*, 965 F.3d at 282–83 (determining

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officer to stop; eluding police			under 8 U.S.C. § 1101(a)(43)(S) if the sentence imposed is at least one year.[15] Possibly, under 8 U.S.C. § 1101(a)(43)(F) if the sentence		Plead to subsection (A) rather than (B) or (C) to decrease chances that offense will be considered CIMT or aggravated felony Keep sentence under one year including suspended time to avoid aggravated felony

that a statute could not qualify as a CIMT since it only required criminal negligence, rather than purpose or recklessness).The Court further stated that "a violation of Virginia felony eluding requires willful and wanton disregard of a law enforcement signal and willful and wanton interference or endangerment. Because both aspects require a sufficiently culpable *mens rea*, and flight carries with it an intrinsic element of risk and danger (citing *United States v. Hudson*, 673 F.3d 263, 268 (4th Cir. 2012), both mens rea and actus rea elements for CIMT are met and there can be no doubt Virginia felony eluding is a CIMT. *Id.* Interestingly, the Third Circuit analyzed the PA eluding statute 75 Pa. Cons. Stat. § 3733(a.2)(2) in *Rosario-Ovando v. AG*, 2022 WL 2205257, at *10 (3rd Cir. 2022) and concluded that the least culpable conduct criminalized by the three aggravating elements of Pennsylvania's felony fleeing or eluding statute is not a CIMT.

[15] This is a class 6 felony in VA punishable by up to 12 months. In *Matter of Espinoza-Gonzalez*, 22 I&N Dec. 889 (BIA 1999) and *Matter of Vallenzuela-Gallardo*, 25 I&N Dec. 838 (BIA 2012), the BIA found that a crime relates to obstruction of justice where it includes the critical element of an intentional attempt, motivated by a specific intent, to interfere with the process of justice. These cases are split on the question of whether such an attempt requires there to be an ongoing criminal proceeding, but it seems evident that the "willful and wanton disregard" of a law enforcement officer's signal to stop required by 46.2-817 goes beyond the "specific intent to interfere with the process of justice." Therefore all subsections of 46.2-817 are overbroad and not crimes relating to obstruction of justice under 8 U.S.C. §1101(a)(43)(S).

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			imposed is at least one year		
	46.2-817(C)	Yes[16]	Possibly, but probably not under 8 U.S.C. § 1101(a)(43)(S) if the sentence imposed is at least one year[17] Possibly, under 8 U.S.C. § 1101(a)(43)(F) if the sentence imposed is at least one year	No	

[16] *See supra* note 12.
[17] *See supra* note 15.

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Reckless driving	46.2-852	No[18]	No		
Driving vehicle that is not under control	46.2-853	No	No	No	
Duty of driver to stop, etc., in event of accident involving injury or death or damage to attended	46.2-894 (failure to report after bodily injury and/or property damage)	No[19]	No	No	

[18] *See supra* Note 2.

[19] In *Nunez-Vasquez v. Barr*, No. 19-1841 (4th Cir. 2020), the 4th Circuit ruled that a conviction under this statute is not a CIMT and that mere failure to comply with reporting requirements is not reprehensible conduct. The Court rejected the Government's argument that any offence that categorically involves fraud is a CIMT.

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property ("hit and run")					
Duty of certain persons accompanying driver to report accidents involving injury, death, or damage to attended property	46.2-895 (failure to report after bodily injury and/or property damage)	Possibly[20]	No	No	If applicable, make explicit in record that offense involved only damage to property, not bodily injury, to decrease likelihood that offense is considered a CIMT If offense involved injury to person or death, keep out reference to personal injury/death in record of conviction

[20] *See supra* note 14.

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