

**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
Embezzlement Deemed Larceny	18.2-111	Yes, depending on whether this charge is convicted under 18.2-95, or 18.2-96	Probably No, under 8 U.S.C. §1101(a)(43) (M) and (U) if the actual/intended loss to the victim exceeds \$10,000 ² Probably No, if convicted under 18.2-95 or 18.2-96. ³	No	Since this fraud related charge can be convicted either under 18.2-95 (grand larceny), or 18.2-96 (petit larceny), keep sentence under one year to avoid potential CIMT charges

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Forging public records	18.2-168	Yes	Yes, under 8 U.S.C. §1101(a)(43)(R) if convicted of forgery and	No	Keep sentence under one year to avoid forgery-related aggravated

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 *Mena v. Lynch*, 820 F.3d 114 (4th Cir. 2016), the Fourth Circuit cited *Soliman* establishes that “a taking of property ‘without consent’ is an essential element” of a § 1101(a)(43)(G) “theft offense.” 419 F.3d at 283. Moreover, the text of INA § 1101(a)(43)(G) provides that the term “theft offense” includes the crime of “receipt of stolen property.” The straightforward conclusion that follows is that a receipt crime—being an INA “theft offense”—requires a taking of property without consent. By definition, embezzlement, like the closely related crime of fraud, involves property that came into the initial wrongdoer’s hands *with* the owner’s consent. This is an immutable fact regardless of whether the property is subsequently transferred to, and received by, a third party. Accordingly, a conviction for receipt of embezzled property under § 659 does not require proof that the owner did not consent to the taking of the property. Lacking the “without consent” element, receipt of embezzled property under § 659 does not fall within the § 1101(a)(43)(G) theft offense definition. Consequently, the crime set forth in the second paragraph of § 659 “sweeps more broadly” than the generic § 1101(a)(43)(G) theft offense, and it is not an INA aggravated felony under the categorical approach. Accordingly, section 1101(a)(43)(G) plainly applies to both “taking” and “receiving” offenses. Thus, a “receipt offense” is one type of “theft offense” for purposes of the INA.

³ See *Omargharib v. Holder*, 775 F.3d 192 (4th Cir. 2014); see also *Roxine Curlene Mattis*, A036 810 946 (BIA June 13, 2017) (unpublished BIA decision) (reopening and terminating proceedings *sua sponte* in light of intervening case law rendering embezzlement under Va. Code 18.2-111 not an aggravated felony theft or fraud offense).

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			<p>sentence imposed is at least one year.⁴</p> <p>Yes, under 8 U.S.C. §1101(a)(43) (M) and (U) if the actual/intended loss to the victim exceeds \$10,000.⁵</p>		<p>felony charge under 8 U.S.C. § 1101(a)(43)(R).</p> <p>If impossible to keep sentence under 1 year.⁶</p> <p>If possible, make clear in record of conviction that actual and intended loss to the victim did not exceed</p>

⁴ 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). Additionally, in *United States v. Lucas Garcia*, an unpublished case, the Fourth Circuit reiterated that § 18.2-168 is a categorical match to the aggravated felony forgery grounds under INA. 831 Fed.Appx. 90. 91 (4th Cir. 2020) (court citing and affirming *Alvarez v. Lynch* decision). 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), 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).

⁵ 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).

⁶ *See supra* fn 4.

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Forging Coin or Bank Notes	18.2-170	Yes	Yes, under 8 U.S.C. §1101(a)(43)(R) if convicted of forgery and sentence imposed is at least one year. ⁸ Yes, under 8 U.S.C. §1101(a)(43) (M) and (U) if the actual/intended	No	\$10,000 to avoid fraud aggravated felony charge. ⁷ Amend it to a different charge to 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. If possible, make clear in record of conviction that actual and intended loss to the victim did not exceed

⁷ See *supra* fn 5.

⁸ See *supra* fn 4.

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Making or having anything designed for forging writing	18.2-171	Yes	loss to the victim exceeds \$10,000 Yes, under 8 U.S.C. §1101(a)(43)(R) if convicted of forgery and sentence imposed is at least one year. ⁹	No	\$10,000 to avoid fraud aggravated felony charge Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R)

⁹ See *supra fn 4*. In *In Re: Elizabeth Astacio A.k.a. Elizabeth De Los Angeles Moncada Hernandez*, 2017 WL 5377574, at *1 (BIA) (unpublished), the BIA analyzed whether this is a categorical match to 101(a)(43)(R). Generic “forgery” means “the false making or materially altering, with intent to defraud, of any writing, which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability.” See *Alvarez v. Lynch*, 828 F.3d at 293; Black’s Law Dictionary 677 (8th ed. 2004). Viewed generically, “counterfeiting” means the unauthorized imitation of documents or items of value with the intent to defraud, deceive, or injure by claiming or passing them as genuine. With these generic definitions in mind, the BIA deemed it evident that Va. Code Ann. § 18.2-171 is a categorical aggravated felony. As the Virginia Supreme Court has explained, section 18.2-171 covers and provides punishment for two offenses in the alternative: (1) The making or mending of ‘any plate, block, press, or other thing, adapted and designed for the forging and false making of any writing, ... or (2) the possession of ‘any such plate, block, press, or other thing, with intent to use, or cause or permit it to be used, in forging or false making any such writing.’ *Smith v. Com.*, 55 S.E.2d 427, 428 (Va. 1949) (construing an identically-worded statutory predecessor to Va. Code Ann. § 18.2-171). BIA concluded that one who makes or mends an instrumentality that is designed for the forging or false making of writings, or who possesses that instrumentality with the intent to use it, or see it used, in the forging or false making of writings, has necessarily engaged in conduct that stands in a logical relation to the acts of counterfeiting or forgery which the

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Forging, uttering, etc. other writings	18.2-172	Yes ¹²	Probably, under 8 U.S.C. §1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000. ¹⁰		If impossible to keep sentence under one year. ¹¹ 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).
			Yes, under 8 U.S.C. §1101(a)(43)(R) if	No	Keep sentence under one year to avoid forgery-related aggravated

instrumentality makes possible. The BIA also held that Congress drafted 101(a)(43)(R) broadly, to include all offenses “relating to” counterfeiting or forgery, our categorical inquiry does not require a formal “matching” of the elements of Va. Code Ann. § 18.2-171 to those of generic “counterfeiting” or generic “forgery.” *Id*; *See, e.g., Alvarez v. Lynch*, 828 F.3d 288, 293 (4th Cir. 2016).

¹⁰ *See supra fn 4.*

¹¹ *See supra fn 4.*

¹² *Matter of Seda*, 17 I. & N. Dec. 550 (BIA 1980).

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			sentence imposed is one year or more. ¹³ Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended loss to the victim exceeds \$10,000. ¹⁴		felony charge under 8 U.S.C. § 1101(a)(43)(R) If impossible to keep sentence under one year. ¹⁵ 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). ¹⁶ To avoid an aggravated felony, consider alternative plea to 18.2-95

¹³ See *supra* fn 4.
¹⁴ See *supra* fn 5.
¹⁵ See *supra* fn 4.
¹⁶ See *supra* fn 5.

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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 ¹⁸ Probably, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000. ¹⁹	No	grand larceny or 18.2-96 petit larceny ¹⁷ (but note that this will not avoid the CIMT grounds of removability). 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)

¹⁷ See *supra* fn 17.

¹⁸ As discussed in fn 4.

¹⁹ See *supra* fn 5.

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					To avoid aggravated felony, consider alternative plea to 18.2-95 grand larceny or 18.2-96 petit larceny ²⁰ (but note that this will not avoid the CIMT grounds of removability)

²⁰ See *supra* fn 17.

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Impersonating officer	18.2-174	Probably ²¹	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. § 1101(a)(43)(R)

²¹ An immigration practitioner may 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. ²² Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended loss to the victim exceeds \$10,000. ²³ Possibly, under 8 U.S.C. § 1101(a)(43)(G) if		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. ²⁵ 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

²² See *supra* fn 4.

²³ See *supra* fn 5.

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			sentence imposed is at least one year ²⁴		felony charge under 8 U.S.C. § 1101(a)(43)(M), (U). To avoid an aggravated felony, consider alternative plea to 18.2-95 grand larceny or 18.2-96 petit larceny (but note that this will not avoid the CIMT grounds of removability). ²⁶

²⁴ There is a strong argument that this offense should not be categorized as a theft aggravated felony at 8 USC § 1101(a)(43)(G) because it includes consensual takings, rendering it not a categorical match to the federal theft aggravated felony ground. This argument is rooted in the holding of the Fourth Circuit Court of Appeals in *Omargharib v. Holder* (Case No. 13-2229), finding that a Virginia “larceny” offense (in the context of grand larceny under Va. Code 18.2-95) is categorically overbroad with regard to the aggravated felony theft offense at 8 U.S.C. 1101(a)(43)(G) because it is defined as criminalizing theft *or* fraud offenses. *See also 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).
²⁶ *See supra* fn. 17.

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Financial Exploitation of Vulnerable Adults	18.2-178.1	Probably Yes ²⁷	Probably Yes ²⁸	No	Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R) To avoid an aggravated felony, consider alternative plea to 18.2-95 grand larceny or 18.2-96 petit larceny (but note that this will not

²⁷ 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).

²⁸ In *Matter of KOAT*, 28 I&N Dec. 450 (BIA 2022), the BIA held that generic theft under section 101(a)(43)(G) of the Act is defined as “the taking of, or exercise of control over, property without consent whenever there is criminal intent to deprive the owner of the rights and benefits of ownership, even if such deprivation is less than total or permanent.” *Matter of Garcia-Madruga*, 24 I&N Dec. 436, 440–41 (BIA 2008) (footnote omitted). This definition does not encompass crimes committed by fraud or deceit because such an offense “ordinarily involves the taking or acquisition of property with consent that has been fraudulently obtained.”

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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. ²⁹ Possibly, under 8 U.S.C. § 1101(a)(43)(R) if sentence imposed is one year or greater. ³⁰	No	avoid the CIMT grounds of removability). 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

²⁹ See *supra* fn 5.

³⁰ See *supra* fn 4.

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					<p>that defendant did not engage in false writing or forgery in order to preserve defense against forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R); if this is impossible leave record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language.³¹</p> <p>Try to get conviction designated as misdemeanor and sentence of 6 months or less imprisonment if client would otherwise qualify for petty</p>

³¹ See *supra* fn 4.

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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. ³³	No	<p>offense exception to grounds of inadmissibility</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)³²</p> <p>If possible, make clear in record of conviction that actual and intended loss to the victim did not exceed \$10,000 to avoid fraud aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M), (U)</p>

³² See *supra* fn 17.

³³ See *supra* fn 5.

****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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			Possibly, under 8 U.S.C. § 1101(a)(43)(R) if sentence imposed is one year or greater. ³⁴		Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R) To avoid an aggravated felony, consider alternative plea to 18.2-95 grand larceny or 18.2-96 petit larceny (but note that this will not avoid the CIMT grounds of removability). ³⁵
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	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

³⁴ See *supra* fn 4.

³⁵ See *supra* fn 17.

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			<p>loss or potential loss to the victim.³⁶</p> <p>Probably, under 8 U.S.C. § 1101(a)(43)(R) if sentence imposed is at least one year.³⁷</p>		<p>aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M), (U).³⁸</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</p>

³⁶ See *supra* fn 5.

³⁷ See *supra* fn 4.

³⁸ See *supra* fn 5.

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False statements or failure to disclose material facts in order to	18.2-186.2	Yes	Possibly, 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
					as to means of commission of offense and seek to have record reflect entire text of statutory language. ³⁹ 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). ⁴⁰

³⁹ See *supra* fn 4.

⁴⁰ See *supra* fn 17.

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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.⁴¹</p>		<p>aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M), (U).⁴²</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>

⁴¹ See *supra* fn 4.

⁴² See *supra* fn 5.

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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					<p>leave record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language.⁴³</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)⁴⁴</p>

⁴³ See *supra* fn 4.

⁴⁴ See *supra* fn 17.

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Identity theft	18.2-186.3(A)(1)	Yes ⁴⁵	Probably, under 8 U.S.C. § 1101(a)(43)(G) if sentence imposed is at least one year ⁴⁶	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) To avoid an aggravated felony, consider alternative plea to 18.2-95
	18.2-186.3(A)(2)	Yes ⁴⁸	Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if loss to the victim exceeds \$10,000 Possibly under 8 U.S.C. § 1101(a)(43) (G) if	No	

⁴⁵ The Fourth Circuit recently held in *Salazar v. Garland* 56 F.4th 374, 380 (4th Cir. 2023) that Va. Code Ann. § 18.2-186.3(A)(2) is categorically a crime involving moral turpitude.
⁴⁶ See *supra* fn 24.

⁴⁸ The Fourth Circuit held in *Salazar v. Garland* 56 F.4th 374, 380 (4th Cir. 2023) that 18.20186.3(A)(2) is a CIMT.

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			sentence imposed is at least 1 year. ⁴⁹ Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000 ⁵⁰		grand larceny or 18.2-96 petit larceny (but note that this will not avoid the CIMT grounds of removability). ⁴⁷
	18.2-186.3(A)(3)	Yes	Possibly under 8 U.S.C. §1101(a)(43) (G) if sentence imposed is at least one year. ⁵¹	No	

⁴⁹ As discussed in fn4 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 24.

⁵⁰ *See supra* fn 24.

⁴⁷ *See supra* fn 17. *See also supra* fn 24.

⁵¹ *See supra* fn 24.

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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 ⁵²		
	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 ⁵³	No	

⁵² See *supra* fn 24.

⁵³ See *supra* fn 24.

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	18.2-186.3(B)(1) *note distinct from (B1)	Yes	Probably, under 8 U.S.C. § 1101(a)(43)(G) if sentence imposed is at least one year ⁵⁴ Yes, under 8 U.S.C. § 1101(M) and (U) if the actual/intended loss to the victim exceeds \$10,000 ⁵⁵	No	
	18.2-186.3(B)(2)	Yes	Possibly under 8 U.S.C. § 1101(a)(43) (G) if	No	

⁵⁴ See *supra* fn 24.

⁵⁵ See *supra* fn 24.

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			<p>sentence imposed is at least one year.⁵⁶</p> <p>Yes, under 8 U.S.C. § 1001(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000⁵⁷</p>		
	18.2-186.3(B)(3)	Yes	<p>Possibly under 8 U.S.C. § 1101(a)(43)(G) if sentence imposed is at least one year⁵⁸</p>	No	

⁵⁶ As discussed in fn 4 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 24.

⁵⁷ *See supra* fn 24.

⁵⁸ *See supra* fn 24.

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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 ⁵⁹		
	18.2-186.3(B)(4)	Yes	Possibly under 8 U.S.C. § 1101(a)(43) (G) if sentence imposed is at least one year ⁶⁰ Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if there are allegations of loss and the actual/intended loss to	No	

⁵⁹ See *supra* fn 24.

⁶⁰ See *supra* fn 24.

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			the victim exceeds \$10,000 ⁶¹		
	18.2-186.3(B1)	No ⁶²	Probably Not under 8 U.S.C. § 1101(a)(43)(G) or under 8 U.S.C. § 1101(a)(43)(M) and (U) ⁶³	No	
Credit card theft	18.2-192(1)(a)	Probably ⁶⁴	Possibly, under 8 U.S.C. § 1101(a)(43)(G) if the	No	

⁶¹ See *supra* fn 24.

⁶² In *Nunez Vásquez 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.

⁶³ See *supra* fn 62. Need not involve fraud nor harm to the government.

⁶⁴ 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

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			sentence imposed is more than one year ⁶⁵		

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).

⁶⁵ 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). In *Gutierrez v. Sessions*, 887 F.3d 770, 775 (6th Cir. 2018), where the respondent had a conviction under 18.2-192(1), the Sixth Circuit affirmed BIA’s determination that Virginia Code § 18.2-192(1) is “overbroad vis-à-vis the ‘theft offense’ concept” because the statute contained at least one subdivision, (1)(c), under which “a person can be convicted . . . absent proof of an ‘intent to deprive’ the rightful owner of the property.” The Court also affirmed BIA’s determination that the section is divisible because its subdivisions “criminalize[d] diverse acts, committed with different mental states.” Further, since a person guilty of Credit Card theft is punished under Va Code 18.2-96 (petit larceny), immigration practitioners could also cite *Omargharib v. Holder*, 775 F.3d 192, 200 (4th Cir. 2014), which held that 18.2-95 (grand larceny) is not an aggravated felony. See *also* unpublished case SBM XXX 017, reach out to <https://www.irac.net/ben/> for access. See *also supra* fn 24.

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	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. ⁶⁷	No	Keep sentence under one year to avoid theft aggravated felony charge under 8 U.S.C. § 1101 (a)(43)(G) 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
	18.2-192(1)(c)	Probably ⁶⁸	Possibly, under 8 U.S.C. § 1101(a)(43)(G) if the sentence imposed is more than one year. ⁶⁹	No	

⁶⁷ See *supra* fn 65.

⁶⁸ See *supra* fn 24.

⁶⁹ 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. In *Gutierrez v. Sessions*, 887 F.3d 770, 775 (6th Cir. 2018), where the respondent had a conviction under 18.2-192(1), the Sixth Circuit affirmed BIA's determination that Virginia Code § 18.2-192(1) is "overbroad vis-à-vis the 'theft offense' concept" because the statute contained at least one subdivision, (1)(c), under which "a person can be convicted . . . absent proof of an 'intent to deprive' the rightful owner of the property." The Court also affirmed BIA's determination that the section is divisible because its subdivisions "criminalize[d] diverse acts, committed with different mental states." Further,

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	18.2-192(1)(d)	Probably ⁷⁰	Possibly, under 8 U.S.C. § 1101(a)(43)(G) if the sentence imposed is more than one year. ⁷¹	No	<p>this is impossible, plead to (1)(b) and create affirmative record that there was no taking of property without consent.</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).⁶⁶</p> <p>To preserve an argument against categorization as a crime involving</p>

since a person guilty of Credit Card theft is punished under Va Code 18.2-96 (grand larceny), immigration practitioners could also cite *Omargharib v. Holder*, 775 F.3d 192, 200 (4th Cir. 2014), which held that 18.2-95 (grand larceny) is not an aggravated felony.

⁷⁰ See *supra* fn 24.

⁷¹ See *supra* fn 69.

⁶⁶ See *supra* fn 17.

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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
Credit card forgery	18.2-193(1)(a)	Yes	Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000. ⁷² Yes, under 8 U.S.C. §1101(a)(43)(R) if convicted of forgery and sentence imposed is at	No	moral turpitude, plead to (1)(c); if this is impossible plead to (1)(a) or (1)(d) and create an affirmative record that there was no intent to take permanently 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. §

⁷² See *supra* fn 5. See also fn 24.

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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?¹	COMMENTS AND PRACTICE TIPS
			<p>least one year; arguably not under this provision if convicted of uttering rather than forgery.⁷³</p>		<p>1101(a)(43)(R); if this is impossible leave record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language.⁷⁴</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 4.

⁷⁴ See *supra* fn 4.

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	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. ⁷⁶ Probably, under 8 U.S.C. § 1101(a)(43)(R) if sentence imposed is one year or more. ⁷⁷	No	avoid the CIMT grounds of removability). ⁷⁵ 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

⁷⁵ See *supra* fn 17.

⁷⁶ See *supra* fn 5. See also *supra* fn 24.

⁷⁷ See *supra* fn 4.

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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
					grand larceny or 18.2-96 petit larceny (but note that this will not avoid the CIMT grounds of removability). ⁷⁸
	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 ⁷⁹ Yes, under 8 U.S.C. §1101(a)(43)(R) if convicted of forgery and sentence imposed is at least one year; arguably	No	Keep sentence under one year to avoid forgery-related aggravated felony charge under 8 U.S.C. § 1101(a)(43)(R) If impossible to keep sentence under one year, create affirmative record of uttering rather than forgery to preserve defense against forgery aggravated felony charge at 8 U.S.C. § 1101(a)(43)(R); if this is impossible

⁷⁸ See *supra* fn 17.

⁷⁹ See *supra* fn 24.

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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?¹	COMMENTS AND PRACTICE TIPS
			not under this provision if convicted of uttering rather than forgery		<p>leave record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language.⁸⁰</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>

⁸⁰ See *supra* fn 4.

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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?¹	COMMENTS AND PRACTICE TIPS
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. ⁸²	No	avoid the CIMT grounds of removability). ⁸¹ 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	No	If alleged actual or intended loss to the victim exceeds \$10,000, in order

⁸¹ See *supra* fn 17.

⁸² 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 24.

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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
			cost to the victim exceeds \$10,000 ⁸⁴		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). ⁸³
	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. ⁸⁵	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. ⁸⁶	No	

⁸⁴ See *supra* fn 5. See also *supra* fn 24.

⁸³ See *supra* fn 17.

⁸⁵ See *supra* fn 5.

⁸⁶ See *supra* fn 5. See also *supra* fn 24.

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OFFENSE	STATUTE	CRIME INVOLVING MORAL TURPITUDE (CIMT)?	AGGRAVATED FELONY?	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY? ¹	COMMENTS AND PRACTICE TIPS
	18.2-195(2)(a)	Yes	Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended cost to the victim exceeds \$10,000. ⁸⁷	No	
	18.2-195(2)(b)	Yes	Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended cost to the victim exceeds \$10,000. ⁸⁸	No	
	18.2-195(2)(c)	Yes	Yes, under 8 U.S.C. § 1101(a)(43) (M) and (U) if the actual/intended	No	

⁸⁷ See *supra* fn 5. See also *supra* fn 24.

⁸⁸ See *supra* fn 5. See also *supra* fn 24.

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Criminally receiving goods and services fraudulently obtained			cost to the victim exceeds \$10,000. ⁸⁹		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 grounds of inadmissibility
	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. ⁹⁰	No	
	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 ⁹¹	No	

⁸⁹ See *supra* fn 5. See also *supra* fn 24.

⁹⁰ See *supra* fn 5. See also *supra* fn 24.

⁹¹ See *supra* fn 24.

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					<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).⁹²</p>

⁹² See *supra* fn 17.

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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. ⁹³ Probably, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended the loss to the victim exceeds \$10,000. ⁹⁴	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

⁹³ See *supra* fn 4.

⁹⁴ See *supra* fn 5. See also *supra* fn 24.

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	18.2-204.1(B)	Yes	Possibly, under (R) if sentence imposed is one year or greater. ⁹⁷ Probably, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000. ⁹⁸	No	this is impossible leave record ambiguous as to means of commission of offense and seek to have record reflect entire text of statutory language. ⁹⁵ Avoid plea to subsection (C) and create affirmative record, if possible, that no firearms were involved in the offense

⁹⁷ See *supra* fn 4. There could also be an argument that this is a Class 1 misdemeanor and since punishment for Class 1 misdemeanor in Virginia is "12 months," a practitioner could argue that "12 months" is not the same as "1 year" as required under aggravated felony under 8 U.S.C. § 1101(a)(43)(R) pursuant to *Belcher v. Commonwealth*, S.E.2d 2022 WL 4472825 (September 27, 2022).

⁹⁸ See *supra* fn 5. See also *supra* fn 24.

⁹⁵ See *supra* fn 4.

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Manufacture, sale, etc., or	18.2-204.1(C)	Yes	Possibly, under (R) if sentence imposed is one year or greater. ⁹⁹ Probably, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000. ¹⁰⁰	Probably triggers the firearms grounds of deportability at 8 U.S.C. § 1227(a)(2)(C) if firearm used matches the federal definition at 18 U.S.C. § 921(a)	If possible, make clear in record of conviction that actual and intended loss to the victim was less than \$10,000 to avoid fraud aggravated felony charge under 8 U.S.C. § 1101(a)(43)(M), (U). ⁹⁶
	18.2-204.2	Possibly not ¹⁰¹	Possibly, but probably not, under 8 U.S. C. §	No	Keep sentence under one year to avoid forgery-related aggravated

⁹⁹ See *supra* fn 4.

¹⁰⁰ See *supra* fn 5. See also *supra* fn 24.

⁹⁶ See *supra* fn 5.

¹⁰¹ 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,

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possession of fictitious, facsimile or simulated official license or identification			1101(a)(43)(P) if the sentence imposed is at least one year ¹⁰² Possibly, under 8 U.S.C. § 1101(a)(43)(R) if the sentence imposed is one year or greater.		felony charge under 8 U.S.C. § 1101(a)(43)(R) If applicable, emphasize in record that offense involved only possession of documents; if offense involved sale, manufacture or other conduct, try to keep out of record or leave record ambiguous, to preserve arguments against forgery and

is not a crime involving moral turpitude (*Matter of Serna*, 20 I&N Dec. 579 (BIA 1992)). However, the BIA has also 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.
¹⁰² The elements of Virginia Code § 18.2-204.2 are not the same as the elements of 18 U.S.C. 1543 or 18 U.S.C. 1546(a), as required under the document fraud aggravated felony ground at 8 U.S.C. § 1101(a)(43)(P) because the Virginia statute does not require an intent to defraud or knowledge of the documents' fictitiousness. As the Virginia statute criminalizes conduct that does not fall under (P), an immigration attorney could argue that a conviction under this statute is categorically not an aggravated felony under (P).

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Procuring animal, aircraft, vehicle or boat with intent to defraud	18.2-206	Yes ¹⁰⁴	Yes, under 8 U.S.C. § 1101(a)(43)(M) and (U) if the actual/intended loss to the victim exceeds \$10,000 ¹⁰⁵	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 grounds. ¹⁰³

¹⁰³ See *supra* fn 4. 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 *Omarharib v. Holder*, 775 F.3d 192 (4th Cir. 2014). See *also supra* fn 24.

¹⁰⁴ The Fourth Circuit held without any detailed analysis that a conviction for violating Va.Code Ann. § 18.2–206 by procuring a vehicle with intent to defraud qualifies as a morally turpitudinous act. *Kporlor v. Holder*, 597 F.3d 222, 225 (4th Cir. 2010).

¹⁰⁵ See *supra* fn 24.

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					felony charge under 8 U.S.C. § 1101(a)(43)(G) If alleged actual or intended loss to the victim exceeds \$10,000, in order to avoid an aggravated felony, consider alternative plea to 18.2-95 grand larceny or 18.2-96 petit larceny (but note that this will not avoid the CIMT grounds of removability). ¹⁰⁶

¹⁰⁶ See *supra* fn 17.

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